

## Calendar No. 995

96TH CONGRESS }  
2d Session

SENATE

{ REPORT  
No. 96-913

### LEGISLATIVE COUNSEL FILE COPY

#### FOREIGN SERVICE ACT OF 1980

AUGUST 22 (legislative day, JUNE 12), 1980.—Ordered to be printed

Mr. PELL (for Mr. CHURCH), from the Committee on Foreign Relations, submitted the following

#### REPORT

together with

#### ADDITIONAL VIEWS

[To accompany S. 3058]

The Committee on Foreign Relations, having had under consideration an original bill to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes, reports favorably thereon and recommends that the bill do pass.

#### PURPOSE

In 1978, Congress enacted the Civil Service Reform Act (Public Law 95-454), an attempt to improve the management and efficiency of the Federal Civil Service. The Foreign Service Act is intended to be a companion measure designed to strengthen and improve the Foreign Service of the United States by reorganizing and consolidating the components of the Service which exist in six executive departments and agencies (the Department of State, the International Communication Agency, the Agency for International Development, the Peace Corps, the Arms Control and Disarmament Agency, and the Department of Commerce) under one law governing Foreign Service operations and personnel administration.

#### BACKGROUND

The basic legislation under which the Foreign Service officer corps operates today is the Foreign Service Act of 1946. The fundamental purposes for establishing a separate Foreign Service were to provide

the President and the Secretary of State with an exceptionally able corps of disciplined officers and staff who can effectively represent U.S. policies and interests overseas, and assist the Secretary and his senior advisors at home in the formulation of foreign policy. In enacting the 1946 act, Congress expressed the belief that if the Foreign Service were to accomplish its mission, its personnel policies would have to be adjusted to that mission. Therefore, the 1946 legislation incorporated a number of unique features considered necessary to assure continued high quality staffing in the variety of U.S. missions throughout the world, and drew from the Civil Service and military personnel systems as appropriate. The features which distinguish the Foreign Service from the Civil Service are the rank-in-person system, the requirement to serve overseas, the "up or out" principle, and mandatory retirement at age 60.

The Foreign Service Act of 1980 retains the above features and adds the following changes intended to improve the effectiveness of the Foreign Service.

The bill would—

(1) Establish a new Senior Foreign Service, comparable to the Senior Executive Service. Entry into the Senior Foreign Service would be via special threshold performance evaluation boards which would apply higher standards than those now applied to persons considered for promotion to the senior ranks. For example, a Foreign Service Officer in the Department might be eligible for consideration for no more than five times, after which he would be retired if not promoted. Members of the Senior Foreign Service would be permitted to serve for a limited period of time in each of its three grades, and failure to achieve promotion to the next within that period would also lead to retirement. However, limited extensions of career appointments could be granted and extended on the basis of outstanding performance. The performance of all personnel in the Senior Foreign Service would be reviewed annually and provision is made for the separation of those whose performance fails to meet the standard of their class.

(2) Reduce the number of personnel categories from more than a dozen to two—with a single pay scale for both.

(3) Provide for a statutory basis for labor-management relations by creating a new Foreign Service Labor Relations Board and a Foreign Service Impasse Disputes Panel.

(4) Provide similar requirements for granting career tenure, performance evaluation, promotions based on merit principles, and selection out for substandard performance for all members of the Foreign Service from top to bottom.

(5) Provide a clear distinction between Foreign Service and Civil Service employment. It is the intention of this legislation to eliminate the "domestic" Foreign Service personnel category and to limit Foreign Service career status only to those people who accept the discipline of overseas service.

(6) Improve interagency coordination in the interest of maximum compatibility among agencies employing Foreign Service personnel, and compatibility between the Foreign Service and the Civil Service.

(7) Recodify and consolidate the various laws relating to Foreign Service personnel which have been enacted outside the framework of the existing Foreign Service Act.

(8) Provide for higher levels of compensation for Senior Foreign Service officers based on outstanding performance.

(9) Establish a clear and precise linkage between the Foreign Service Schedule and the General Schedule. Although the Pay Comparability Act of 1970 applies to the Foreign Service, levels of compensation for the Foreign Service lag far behind those of other Government employees.

#### COMMITTEE ACTION

On June 21, 1979, the Secretary of State sent to the President of the Senate, Executive Communication 1642 containing draft legislation to promote the foreign policy of the United States by strengthening and improving the Foreign Service of the United States, and for other purposes. This communication was referred to the Committee on Foreign Relations.

On July 9, 1979, Senator Frank Church introduced the draft bill by request (S. 1450). Another Executive Communication (No. 2993) containing an amendment authorizing payments from the Foreign Service Retirement and Disability Fund to surviving former spouses of members of the Foreign Service was transmitted to the Senate on February 18, 1980. The draft legislation contained in that Communication was introduced by request on March 14, 1980 as Amendment 1683 to S. 1450.

The Foreign Relations Committee held three public hearings (July 27, December 14 and 19, 1979) on the Foreign Service Act. The following individuals provided testimony on that legislation.

Hon. Cyrus R. Vance, Secretary of State.

Hon. Alan K. Campbell, Director, U.S. Office of Personnel Management.

Hon. Robert H. Nooter, Acting Administrator, Agency for International Development.

Hon. John E. Reinhardt, Director, U.S. International Communication Agency.

William C. Veale, American Foreign Service Association.

Hon. Ben H. Read, Under Secretary for Management, Department of State.

Hon. Martin F. Herz, Former Ambassador to Bulgaria, Washington, D.C.

Hon. Sheldon B. Vance, Former Ambassador to Chad and Zaire, Washington, D.C.

Robert Stern, American Foreign Service Association, Washington, D.C.

Kenneth Blaylock, National President, American Federation of Government Employees, Washington, D.C.

Lesley Dorman, President, Association of American Foreign Service Women, Washington, D.C.

Cecil H. Uyebara, Foreign Affairs Chapter, Asian and Pacific American Federal Employees Council, Washington, D.C.

Smith Simpson, Retired Foreign Service Officer, Annandale, Virginia.

Cynthia A. Thomas, Foreign Service Reserve Officer, Washington, D.C.

The Committee held mark-up sessions on this legislation on July 29, and August 5, 1980. On August 5, 1980, the Committee ordered an original bill favorably reported by a vote of 9 to 0. The following Senators voted in favor of this legislation: Senators Pell, Biden, Glenn, Stone, Tsongas, Percy, Baker, Hayakawa, and Lugar.

#### COST ESTIMATE

Rule XXVI of the Standing Rules of the Senate requires that committee reports on bills and resolutions contain a cost estimate for such legislation in the fiscal year it is reported and in each of the following five years. The Congressional Budget Office has prepared the following estimate.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, D.C., August 22, 1980*

HON. FRANK CHURCH,  
*Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached cost estimate for the Foreign Service Act of 1980, as ordered reported on August 5, 1980.

Should the Committee so desire, we would be pleased to provide further detail on the attached cost estimate.

Sincerely,

JAMES BLUM,  
FOR ALICE M. RIVLIN, *Director.*

#### CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: S. 3058.
2. Bill title: Foreign Service Act of 1980.
3. Bill status: As ordered reported by Senate Committee on Foreign Relations on August 5, 1980.
4. Bill purpose: The purpose of this legislation is to strengthen and improve the Foreign Service of the United States. The legislation promotes maximum compatibility between the Foreign Service personnel system and other personnel systems in government. It creates the Senior Foreign Service and simplifies the structure of Foreign Service personnel categories and salaries. Further, the legislation provides a system of incentive payments and awards to encourage and reward outstanding performance.
5. Cost estimate:

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Function 150: Estimated costs .....	23.7	31.6	34.3	37.4	40.6
Function 602:					
Estimated budget authority .....	7.5	8.6	9.7	10.8	12.0
Estimated outlays .....	.5	-.2	-.8	-1.2	-1.3



6. Basis of estimate: For purposes of this estimate it is assumed that this bill will be enacted on October 1, 1980. Sections of the bill with a potential cost impact are discussed below. All sections, except for sections 801-827 require subsequent authorization and appropriation and therefore result in no direct budget impact. All costs have been adjusted for inflation in future years based on CBO economic assumptions.

#### SECTION 209—INSPECTOR GENERAL OF THE FOREIGN SERVICE

This section establishes an Inspector General of the Foreign Service and details the functions of this office. Although not specifically required by law in the past, the State Department currently has such an office and therefore assumes no additional costs will result from this section.

#### SECTION 405—PERFORMANCE PAY

Performance pay is a lump sum payment awarded to members of the Senior Foreign Service for meritorious or distinguished service. In any fiscal year, up to 50 percent of the Senior Foreign Service is eligible for performance pay. The amount of the award is limited to 20 percent of basic salary except that six percent of those eligible may receive up to \$10,000 and one percent of those eligible may receive up to \$20,000.

[In millions of dollars]

Estimated cost—performance pay:

Fiscal year:

1981.....	
1982.....	5.8
1983.....	6.3
1984.....	6.9
1985.....	7.4

No cost is estimated for fiscal year 1981 because the State Department has indicated that the rating and selection cycle cannot be completed in time. The 1982 estimate is based on the methodology of the Office of Personnel Management (OPM) and assumes that the 50 percent eligible will receive an average award of 12-14 percent of their basic salary.

#### SECTION 406—WITHIN CLASS SALARY INCREASES

This section provides for "periodic" step increases for all Foreign Service members. The number of steps per class and the length of time between step increases are not specified so they are left to the discretion of the Administration. OMB proposes a 14-step schedule with annual step increases for all members while in steps one through nine and biennial step increases while in steps 10 through 13. Under current law, the Foreign Service Officer pay schedule contained seven steps; the Foreign Service staff pay schedule contains 10 steps. All Foreign Service Officers receive, by law, annual step increases, whereas the Foreign Service staff receive, by regulation, annual step increases for steps one through seven and step increases every fourth year thereafter.

[In millions of dollars]

## Estimated cost—step increases:

## Fiscal year:

1981	4.8
1982	5.1
1983	5.5
1984	6.0
1985	6.5

These figures were derived by applying an average 3 percent step increase to the eligible population under the Foreign Service Schedule and deducting the estimated costs under the previous system.

## SECTION 412—SPECIAL DIFFERENTIAL AND PREMIUM PAY

Under this section, the Secretary may continue to pay special differentials to Foreign Service Officers (FSO) who are required to perform work in excess of normal requirements. In addition, it entitles FSO's to receive premium pay for overtime work. FSO's are not currently eligible for overtime pay.

[In millions of dollars]

## Estimated cost—premium pay:

## Fiscal year:

1981	0.5
1982	.5
1983	.6
1984	.6
1985	.7

Net additional costs of this provision are estimated at \$.5 million based on the costs incurred in fiscal year 1977 under a similar provision, adjusted for inflation.

## SECTION 607—RETIREMENT FOR EXPIRATION OF TIME IN CLASS

The Secretary is authorized to limit the time that members may spend in a particular salary class. Members face mandatory retirement when this limit is exceeded. Under current law the Secretary may set limits only for Foreign Service Officers. This section extends the authority to all members of the Foreign Service. Some savings may result from this provision. However, since the limitations are the discretion of the Secretary, no basis exists for estimating the amount.

## SECTION 704—TRAINING AUTHORITIES

This section expands the current authority to provide orientation and language training for family members of Foreign Service employees. Whereas current law limits reimbursable training costs to \$300 per month per individual for up to 6 months, the bill specifies no limits. The Department of State, however, expects that the former limits will be maintained by regulation. These limits would only be raised in the event of greatly increased training costs or where extended language training is necessary, and would therefore increase costs by no more than \$10,000 per year.

This section also authorizes functional training for dependents of Foreign Service members. The Department of State plans to provide such training only when space is available, thereby incurring no additional costs.

## Sections 801-827—Retirement Provisions

The bill, if enacted, would increase the mandatory retirement age from 60 to 65 years. This would have a budgetary impact of decreasing outlays from the retirement fund. The estimate assumes that those people who now retire under current mandatory age provisions will retire uniformly over a six year period under this bill.

The increase in basic pay resulting from enactment of the various provisions in this bill would affect the retirement fund in three ways. It would:

1. Increase the employee and employer contributions to the fund;
2. Increase the unfunded liability of the fund; and
3. Increase the initial annuities of future retirees.

The increase in unfunded liability of \$62.4 million would be amortized in thirty equal annual installments of \$3.9 million each. In addition, the increase in net income to the fund (additional payments less outlay increases) would earn interest and thus also increase budget authority.

In addition, this bill would provide retirement credit for federal employees who had served with Radio Free Europe, Radio Liberty, and Radio Free Asia during years when those organizations were funded by the Central Intelligence Agency. Further, it would provide retirement credit for employees who served with the Armed Forces Network, Europe at a time when such employees were not entitled to retirement credit. The estimate assumes that there are approximately 50 people affected by this provision, and that they will retire at a rate of approximately 10 per year.

The following table summarizes the budgetary effect on the Foreign Service Retirement fund that would result from enactment of this bill.

[By fiscal years, in millions of dollars]

	1981	1982	1983	1984	1985
Estimated outlays:					
Changing mandatory retirement.....	-0.7	-2.1	-3.3	-4.3	-5.5
Increased annuities.....	1.2	1.8	2.4	3.0	3.5
Providing retirement credit.....	(*)	.1	.1	.1	.2
Total.....	.5	-2	-8	-1.2	-1.3
Estimated budget authority:					
Increased employee/employer contributions.....	3.4	3.9	4.4	4.9	5.3
30-yr amortization payments.....	3.9	3.9	3.9	3.9	3.9
Interest earned.....	.2	.2	.2	.2	.2
Total.....	7.5	8.6	9.7	10.8	12.0

In addition this bill, if enacted, would permit former spouses of annuitants to receive a pro rata share of the annuity and survivor benefits. This provision would redistribute but not increase outlays.

This bill also provides for Binational Center Employees to be entitled to receive benefits and make contributions to the retirement fund. Over the next five years there will be no significant costs incurred by the government as a result of enactment of this provision.

The bill continues to provide for reemployment of retired members of the Foreign Service and raises the limit any one annuitant can earn. There is no change in the hourly compensation rate or the amount of

service for which annuitants would be reemployed, so no additional cost would be incurred. The same number of hours would be billed but higher earnings would be distributed to fewer annuitants.

#### SECTION 901—TRAVEL AND RELATED EXPENSES

This provision extends the authority of the Secretary to pay travel and related expenses of Foreign Service employees and their families. Travel costs previously not covered are:

1. Family members joining a Foreign Service employee in a place of temporary duty (TDY).
2. travel and relocation costs for employees and their families assigned to or within the United States.
3. one round-trip per year for children of divorced Foreign Service employees.
4. the costs of emergency evacuation and care of young children of Foreign Service employees when their parents are unable to accompany them.
5. an additional rest and relaxation trip per year in the event of extraordinary circumstances.

[In millions of dollars]

Estimated cost—travel and related expenses:

Fiscal year:	
1981	1.2
1982	1.4
1983	1.5
1984	1.6
1985	1.7

This Department of State estimate is based on the following assumptions:

1. The TDY travel expenses for families will total \$96,000 per year.
2. The 1981 domestic transfer costs will be \$516,000 and thereafter will decrease to \$443,000.
3. Approximately 440 children per year will be eligible for trips at average costs of \$850.
4. Evacuation trips for approximately 53 young children will cost an average of \$700.
5. The total annual cost for additional rest and relaxation travel is estimated to be \$169,000.

Other agencies affected will pay a total of approximately \$170,000 for these provisions.

#### SECTION 904—HEALTH CARE

This section authorizes the continuation of health care to a member of the Foreign Service or to his or her family after the member leaves the Service or dies or dissolves the marriage. This provision continues past practice with the addition of medical coverage for divorced spouses.

[In millions of dollars]

Estimated cost—health care:

Fiscal year:	
1981	0.3
1982	.3
1983	.3
1984	.3
1985	.4

Based on internal divorce and health statistics, the Department of State estimates the medical costs for 24 divorced spouses per year to total approximately \$260,000.

#### SECTION 1006—FOREIGN SERVICE LABOR RELATIONS BOARD (FSLRB)

This section defines the functions of the Board and establishes the position of the chairperson and two other members. Because the FSLRB is already provided in current law, additional costs will be incurred only for the members. The two members are to be compensated for travel and for each day they perform their duties. Their compensation is at the daily equivalent of the level V salary of the Executive Schedule. The Department of State estimates that each member will be compensated at approximately \$2,500 per year for an estimated annual cost of \$5,000. Since these members are likely to be local residents, no travel costs are assumed.

#### SECTION 1107—BOARD DECISIONS

This section authorizes the Foreign Service Grievance Board to pay attorney fees incurred by an employee in cases where the Board determines that the agency acted in bad faith, and at all times when the employee is the prevailing party and the decision is based on a finding of discrimination. The State Department estimates that there will be 25 such cases per year. Assuming an average cost of \$800 per caseload, the estimated annual cost for payment of attorney fees is \$20,000.

#### SECTION 2102—CONVERSION TO THE FOREIGN SERVICE SCHEDULE

This section provides for conversion of Foreign Service Officers (FSO) at or below class three, Foreign Service Reserve Officers (FSR) at or below class three, and Foreign Service Staff Officers (FSS) to the Foreign Service Schedule. The Foreign Service Schedule established in section 403 provides for a nine class system. The bill does not establish specific salary rates, although it does limit the maximum salary rate of the highest class of the Foreign Service Schedule to the maximum salary rate of the General Schedule GS-15 level. Following this guideline, the Administration has proposed the following nine class pay system which includes 15 steps per class. The percentage increase between steps one through 10 corresponds to those of the General Schedule (GS). The salaries for steps 11 through 14, which have no corresponding GS links, are increased by 3 percent per step.

	FS proposed schedule	Step 1 pay	GS equivalent
Current classification:			
FSO-3, FSR-3, FSRU-3, or FSS-1	1	\$44,017	15
FSO-4, FSR-4, FSRU-4, or FSS-2	2	33,781	13.38
FSO-5, FSR-5, FSRU-5, or FSS-3	3	26,630	12
FSO-6, FSR-6, FSRU-6, or FSS-4	4	21,563	10.68
FSO-7, FSR-7, FSRU-7, or FSS-5	5	17,935	8.67
FSO-8, FSR-8, FSRU-8, or FSS-6	6	15,322	7.20
FSS-7	7	13,446	5.95
FSS-8	8	12,120	5
FSS-9, FSS-10	9	11,221	4.32

[In millions of dollars]

## Estimated cost—conversion:

## Fiscal year:

1981	-----	17.4
1982	-----	19.0
1983	-----	20.7
1984	-----	22.4
1985	-----	24.2

For purposes of this estimate, the eligible population is based on data provided by OPM on the foreign service as of September 25, 1979. These employees were then converted to the Administration's proposed pay system. The conversion followed the requirements of Section 2106, "Preservation of Status and Benefits." This section stipulates that individuals are to be converted to the class and pay rate that most closely corresponds to the class and step at which the individual currently serves. No individual's class or rate of salary are to be reduced through conversion. This data was adjusted for wage and step increases to arrive at a 1981 data base. From 1981-1985 the step and class structure is assumed to remain constant and is only adjusted for cost of living increases.

## SECTION 2103—CONVERSION TO THE SENIOR FOREIGN SERVICE

This section describes the procedure for conversion of Foreign Service Officers to the Senior Foreign Service. Officers currently serving in classes 2 or 1 must request appointment to the Senior Foreign Service. Eligible officers who do not request such appointment within 120 days of enactment of this bill must retire after three years.

[In millions of dollars]

## Estimated cost—conversion:

## Fiscal year:

1981	-----	0.2
1982	-----	.2
1983	-----	.2
1984	-----	.3
1985	-----	.3

This estimate assumes that all eligible Foreign Service Officers will convert to the Senior Foreign Service on the date of enactment and therefore would receive increased pay as a result of the conversion. Average salary before conversion is estimated at \$52,679; average salary after conversion is estimated at \$52,785.

## SECTION 2105—CONVERSION OF CERTAIN POSITIONS IN THE DEPARTMENT OF AGRICULTURE

This section requires the conversion of certain members of the Foreign Agriculture Service (FAS) to the Foreign Service. Members of the FAS so converted will be transferred out of the Civil Service Retirement Fund and into the Foreign Service Retirement Fund. No net costs are estimated for this conversion during the projection period.

## SECTION 2306—SEPARATE MAINTENANCE ALLOWANCE

Families of Foreign Service members who elect not to accompany the member to a new foreign post will be provided an allowance to maintain a separate household.

## Estimated savings—separate maintenance allowance:

Fiscal year:	Millions
1981	\$3.1
1982	3.4
1983	3.7
1984	4.0
1985	4.3

It is estimated that this provision will result in a net savings because the savings from not moving the family are greater than the allowance for maintaining the separate household. The average Foreign Service family relocation cost is \$40,000 and the separate maintenance allowance is \$35,000 for a net savings of \$5,000 per family. It is estimated that approximately 620 families will elect to maintain separate households.

## SECTION 2307—EDUCATION ALLOWANCE

Current law provides travel costs for children of the employees of the Department of State, International Development Cooperation Agency and International Communication Agency, who are stationed abroad. Travel costs were provided at the rate of two trips per year for children in college and one trip per year for children in secondary school.

This section provides only one trip per year for both categories of children. There are no savings, however, because under current law the agencies already restricted travel to one trip per year.

## SECTION 2308—POSTS REQUIRING SPECIAL INCENTIVES

This section provides a bonus of up to 15 percent of basic pay as an incentive to recruit and retain personnel at posts with adverse environmental conditions.

## Estimated cost—incentive pay:

Fiscal year:	Millions
1981	\$2.0
1982	2.2
1983	2.4
1984	2.7
1985	3.0

This estimate assumes 18 posts will be eligible for the incentive pay based on environmental conditions in fiscal year 1980. The 535 employees at these posts will receive 15 percent of the average annual salary. The estimated costs from 1982-1985 hold constant the number of eligible posts but allow for increases in basic pay.

## SECTION 2310—DANGER PAY ALLOWANCE

A special allowance of up to 25 percent of basic pay is provided for employees who serve in dangerous foreign areas.

## Estimated cost—danger pay allowance:

Fiscal year:	Millions
1981	\$0.4
1982	.5
1983	.5
1984	.6
1985	.7

Based on fiscal year 1980 conditions, this estimate assumes approximately 110 employees staffing three dangerous posts will receive approximately \$4,000 in danger pay.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO prepared cost estimates of two versions of H.R. 6790, which contain provisions similar to or the same as those in the Senate version. The House versions were ordered reported by the House Foreign Affairs Committee and the House Committee on the Post Office and Civil Service. Both cost estimates were dated May 15, 1980. The only major difference among the three versions is the pay schedule, which also affects the retirement cost.

9. Estimated prepared by: Linda Gard, Sherri Kaplan, and Rita Seymour.

10. Estimate approved by:

C. G. NUCKOLS  
(for James L. Blum,  
Assistant Director for Budget Analysis).

#### REGULATORY IMPACT STATEMENT

In accordance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the evaluation of the committee that this bill will have a significant regulatory impact on the various Foreign Service Agencies which utilize its authorities. The passage of this bill will substantially improve the pay, retirement and personnel systems of those agencies, and will require a complete revision of the regulations now governing the operations of those agencies.



## SECTION-BY-SECTION ANALYSIS

### *Section 1—Short title*

This act may be cited as the "Foreign Service Act of 1980."

### *Section 2—Table of contents*

This section provides a table of contents setting forth the chapters and sections contained in the two titles of the bill. Title I, made up of eleven chapters, is a permanent body of law concerning the Foreign Service personnel system. Title II, made up of four additional chapters, contains transitional and technical provisions, and amendments to and repeals of other laws.

## TITLE I—THE FOREIGN SERVICE OF THE UNITED STATES

### Chapter 1—General Provisions

Chapter 1 contains a statement of findings and objectives, definitions, a description of Foreign Service personnel categories and functions, and a statement of the rights and protections of Foreign Service personnel. The statement of objectives reaffirms the principles of merit and impartiality set out in the 1946 act, and refers as well to the current objectives described above. The definitions are primarily adapted from the 1946 act.

The description of Foreign Service personnel categories omits the previous distinction between "Reserve officers" and "Staff officers and employees." The bill seeks to avoid distinctions which imply preferential status to one category or another, and refers to Foreign Service personnel throughout as "members of the Service" rather than as "officers" and "employees." The description of functions of the Service includes reference to the Vienna Conventions on Diplomatic and Consular Relations, which are codifications of modern international practice. It also contains a new reference to the role of the Service in providing guidance in the field of foreign relations.

A final section in the chapter emphasizes employee rights, drawing together and emphasizing current law with respect to the applicability of merit principles, protection against discrimination and reprisals for members of the Service, and equal employment opportunity.

### *Section 101—Findings and objectives*

This section sets forth congressional findings concerning the Foreign Service of the United States and its role in the formulation and implementation of foreign policy. Specifically, section 101(a)(1) emphasizes that a career Foreign Service, characterized by excellence and professionalism, is essential to assist the President and the Secretary of State. Section 101(a)(2) stresses the need for a professional Foreign Service that will provide the resources necessary to serve the foreign

affairs interests of the United States in an integrated fashion and to assist the President, the Secretary of State, and the agencies concerned with foreign affairs in the formulation and conduct of U.S. foreign policy.

Furthermore, section 101(a)(3) states that the Foreign Service, as established by the acts of 1924 and 1946, must be preserved as a separate entity and strengthened and improved to carry out its mission effectively.

Section 101(a)(4) reemphasizes and strengthens provisions in the 1946 act by articulating the continuing need for the members of the Foreign Service to be representative of the American people, aware of U.S. history and informed of current concerns and trends in American life, as well as being knowledgeable of the affairs, cultures, and languages of other countries, and available to serve in assignments throughout the world. At the same time, it is made clear by section 101(a)(5) that the Foreign Service should be operated on the basis of merit principles.

Section 101(b) states the objectives of the act, which are derived in part from the 1946 act, and are expressed broadly as an intention to strengthen and improve the Foreign Service of the United States. This is to be accomplished, in accordance with merit principles, by admission into the Service through impartial and rigorous examination, acquisition of career status only by those who have demonstrated their fitness through successful completion of probationary assignments, effective career development, advancement and retention of the ablest, and separation of those who do not meet the requisite standards of performance. This reflects the "up or out" character of the Foreign Service, which the committee reaffirms as a fundamental basis of operation for the Foreign Service.

The finding that the Foreign Service should be operated on the basis of merit principles is new to the Foreign Service Act, although the legal requirement is not. This finding reflects the sense of other laws promoting equal employment opportunity and prohibiting discrimination. Specifically, merit principles, as defined in section 102(8) of this legislation, are set out in the Civil Service Reform Act (5 U.S.C. 2301) and are made explicitly applicable to the Foreign Service by the bill. These merit principles apply, for example, to recruitment, appointments, assignments, promotions, and training in the Foreign Service.

This section contemplates the maintenance and expansion of an active and effective equal employment opportunity program for the Foreign Service in which special emphasis is given to employment and advancement opportunities for women and members of minority groups. The bill does not create a new or separate body of substantive law in this area, but directs the vigorous implementation of legislation currently applicable to the Foreign Service, such as title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.), sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a), sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a), title I of the Civil Service Reform Act of 1978 (5 U.S.C. 2301, 2302), and section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)).

In order to produce a dynamic Foreign Service, the management of the Service must attain the objective expressed in subsection (b) (2) of fostering the development and vigorous implementation of policies and procedures, including affirmative action programs, which will facilitate and encourage equality of opportunity in entry into and advancement within the Foreign Service. The objective complements the finding that the Foreign Service should be representative of the American people.

Section 101(b) (3) states the objective of simplifying and rationalizing the Foreign Service personnel categories and salary structure to eliminate inefficiencies and inequities which have resulted from the overlapping of personnel categories and pay schedules. Toward this end, the bill eliminates the anomalous "domestic" Foreign Service category which has in the past weakened severely the requirement of availability for worldwide service. One Foreign Service salary schedule results from the elimination of the separate schedules heretofore provided for the various personnel categories. Moreover, distinctions between the existing Officer Corps and the Staff Corps are minimized. Instead of using two different titles, as has been past practice, the bill now refers to members of the Service generally. Both groups of employees perform functions vital to the formulation and conduct of U.S. foreign policy. Both groups accept the same burdens and take the same risks inherent in overseas service. Therefore, both should serve under substantially the same conditions of employment and should share equally in the rewards of Foreign Service life.

Section 101(b) (4) states that the bill will establish a statutory basis for labor-management relations in the Foreign Service which will insure the fullest measure of due process for its members. These have formerly been governed by Executive Order 11636 of December 17, 1971 (36 FR 24901). They will now be governed by chapter 10 of Title I of this bill, which is derived in part from the Executive order and in part from chapter 71 of title 5, United States Code, which governs civil service practice. This section also reaffirms the system for the resolution of individual grievances originally established under sections 691-694 of the Foreign Service Act of 1946, and which is now codified in chapter 11 of title I of this bill, together with certain improvements.

Section 101(b) (5) states the vital objectives of minimizing the impact of the hardships and burdens of overseas service upon members of the Foreign Service, and mitigating the special impact of those conditions upon their families. The unique requirements of the Foreign Service affect both the members of the Service and their families. The ability of family members to grow and develop as individuals is sometimes severely circumscribed when they must either follow a member of the Service from post to post, or suffer the pain of separation. Indeed, until 1972, wives (but not husbands) of Foreign Service officers were viewed as partners in the foreign policy effort, though unpaid and unrewarded, and were evaluated with their husbands when the officer was due for promotion. The demise of this discriminatory requirement has forced the Foreign Service and the foreign affairs agencies to reevaluate the status of Foreign Service families. This bill reflects the strong view that the Govern-

ment has a particular obligation to members of the Foreign Service and their families to minimize the hardships and burdens they face because of the unique demands placed upon them by Government service.

Section 101(b) (6), drawn from section 111(7) of the 1946 act, states the additional objective of providing compensation which will attract and retain qualified personnel, together with a system of incentive payments and awards to encourage and reward outstanding performance. Compensation for the Foreign Service must take into account the conditions of overseas service referred to in section 101(b) (5).

Section 101(b) (7) states the objective of establishing a Senior Foreign Service to provide a highly qualified corps of senior officers who together possess outstanding executive leadership qualities, strong policy formulation capabilities, and highly developed functional foreign language and area expertise. While no single officer will necessarily possess all these qualities, they should all be reflected in the composition of the Senior Foreign Service. This section not only describes the kinds of talents to be reflected in the Senior Foreign Service as a whole, but also suggests the necessary areas of training to which members of the Foreign Service must be exposed, through the mechanism of effective career development patterns, to prepare for entry into the Senior Foreign Service. The responsibility lies both with the individual officer, to seek the necessary training and experience, and with the agency, which must develop the means through which officers can develop these skills. The structure of the Senior Foreign Service is patterned after its civil service analog, the Senior Executive Service, which is defined in title 5 of the United States Code.

Section 101(b) (8) follows section 111(8) of the 1946 act in stating the objective of improving managerial flexibility and effectiveness. The committee's intent is to strike a rational balance between the need for managerial flexibility and for protection of the individual in the Foreign Service.

Section 101(b) (9) states as an objective the promotion of maximum compatibility among the agencies authorized by law to utilize the Foreign Service personnel system, as well as compatibility between that system and other Federal personnel systems.

While at one time the Foreign Service was completely contained within the Department of State as the primary foreign affairs agency, the situation has altered over the years. Today, Foreign Service personnel are found not only in the Department of State, but also in the International Communication Agency, the Agency for International Development, the Peace Corps, the Arms Control and Disarmament Agency, and the Department of Commerce. While the different areas of foreign policy expertise demand different kinds of specialized training, the fundamental skills required of Foreign Service personnel remain the same regardless of agency. The Secretary of State, who is directly responsible to the President for the conduct of foreign policy, must see to it that the activities of all the foreign affairs agencies are coordinated so that no separate unit in any foreign affairs agency takes action to contravene the agreed policies of the United States. The concept of compatibility squares with the current practice

of consultation among the heads of foreign affairs agencies. The individual authorities of each agency head over the personnel and operations of the agency remain intact.

Section 101(b)(10) restates the general objective of enabling the Foreign Service to serve effectively the interests of the United States and providing the highest caliber of representation in the conduct of foreign affairs.

*Section 102—Definitions*

Section 102 defines the key terms used in the bill. Many of the definitions are substantially the same as those contained in section 121 of the 1946 act, but in some cases have been clarified or updated. The definitions in this section do not apply to chapters 2 and 3 of title II of this bill which contain technical and conforming amendments to other laws.

The term "Foreign Service post," which appears in the bill, is not defined because the determination of what constitutes a Foreign Service post is a matter for the President and the Secretary of State. The members and kinds of Foreign Service posts change over time. In 1946, for example, an entity such as the Sinai Support Mission, which is a Foreign Service post, was unknown.

Section 102(a)(1) follows section 121(7) of the 1946 act in defining "abroad" to include all areas not within the United States, which term is defined in section 102(a)(12).

"Agency" is defined by section 102(a)(2) to be an agency as defined in 5 U.S.C. 552(e), which excludes the Congress, the Federal courts, the governments of U.S. territories and possessions, and the government of the District of Columbia. However, it does include Government corporations, independent agencies, and all executive branch establishments, including the Executive Office of the President. The scope of the term is essentially the same as under section 121(4) of the 1946 act.

Section 102(a)(3) defines "chief of mission" as any principal officer in charge of a diplomatic mission or of an office designated by the Secretary of State as diplomatic in nature, including an officer who is temporarily in charge of such a mission or office. This definition is substantially the same as under section 121(9) of the 1946 act.

Section 102(a)(4) follows section 121(3) of the 1946 act in using "Department" to mean the Department of State. However, in this bill, references to the Department also include other agencies authorized to use the Foreign Service personnel system; that is, the International Communication Agency, the Agency for International Development, the Peace Corps, the Arms Control and Disarmament Agency, and the Departments of Commerce and Agriculture.

Section 102(a)(5) defines "employee" to include both civilian and uniformed personnel of the U.S. Government. A different definition of "employee" which is limited to members and former members of the Service is set out in section 1002(8) for application only in chapter 10 of title I of the bill relating to labor-management relations.

Section 102(a)(6) defines "function" to include any duty, obligation, power, authority, responsibility, right, privilege, discretion, or activity. This subsection, which has no parallel in the 1946 act, is added to avoid the need for repetitious use of terms throughout the bill.

Section 102(a)(7) defines "Government" as the Government of the United States of America. This subsection is a verbatim duplication of section 121(5) of the 1946 act.

Section 102(a)(8) defines "merit principles" as those principles set forth in 5 U.S.C. 2301(b), enacted as part of the Civil Service Reform Act of 1978. Among the principles set forth in 5 U.S.C. 2301 are the following: (1) Recruitment should be from qualified individuals, and selection and advancement should be determined solely on the basis of relative ability, knowledge, and skills, after fair and open competition which assures that all receive equal opportunity; (2) discrimination on the basis of race, sex, age, religion, national origin, marital status, or handicapping conditions should be prohibited; (3) equal pay should be provided for equal work, with appropriate incentives and recognition awarded for excellent performance; (4) retention and separation should be based on performance; and (5) employees should be provided effective education and training where this would result in better organizational and individual performance.

Section 102(a)(9) defines "principal officer" as the officer in charge of diplomatic mission, or a consular or other post of the Foreign Service other than a consular agency. While its scope is essentially the same as that of section 121(8) of the 1946 act, this term now also includes special purpose posts, such as the Sinai Support Mission, which were not contemplated by the 1946 act.

Section 102(a)(10) follows section 121(2) of the 1946 act in defining "Secretary" to mean the Secretary of State and adds that "Secretary" includes the heads of other agencies authorized to use the Foreign Service personnel system except with respect to exclusive functions of the Secretary of State. Similarly, in this report, the term "Secretary" unless otherwise indicated, includes the heads of all agencies utilizing the personnel authorities in the bill. The term "Secretary of State" thus refers only to the Secretary of State both because the Secretary of State is the "first among equals" and for ease of reference.

Section 102(a)(11) defines "Service" and "Foreign Service" as the Foreign Service of the United States. This duplicates section 121(1) of the 1946 act.

Section 102(a)(12) defines "United States," when used in a geographic sense, as the several States and the District of Columbia. This definition follows the definition of "continental United States" in the 1946 act with the obsolete term "continental" omitted.

Section 102(b) specifically provides that references in this legislation or in any other law to "Foreign Service officers" shall, with respect to the International Communication Agency, be deemed to refer to Foreign Service information officers. This category of personnel was created by Public Law 90-494, 82 Stat. 810 (August 20, 1968), which is repealed by this bill.

#### *Section 103—Members of the Service*

Section 103 lists the categories of the members of the Foreign Service. It is patterned after section 401 of the 1946 act. There are seven groups of personnel included under the generic term "members of the Service": (1) Chiefs of mission; (2) ambassadors at large; (3) members of the Senior Foreign Service; (4) Foreign Service officers; (5) Foreign Service personnel; (6) foreign national em-

ployees; and (7) consular agents Ambassadors at large were not expressly included among the categories of personnel under the 1946 act, but as the title is in frequent use, its inclusion here is desirable. The Senior Foreign Service is newly established by this bill and has no parallel in the 1946 act. The separate categories of Foreign Service Reserve officers and Foreign Service Staff officers and employees under the 1946 act are abolished, as is the category of Foreign Service Reserve Unlimited established by Public Law 90-494, 82 Stat. 810 (August 20, 1968). The functions enumerated in this section for the various groups of personnel are descriptive rather than limiting.

*Section 104—Functions of the Service*

Section 104 describes in general terms the functions of the members of the Foreign Service. Paragraph (1) states that members of the Service, under the direction of the Secretary, shall represent the interests of the United States in dealings with foreign countries and international organizations and shall perform such other functions as are relevant to their appointments and assignments. Examples of these functions include observing, reporting on, and interpreting events abroad; assisting Americans abroad and foreigners wishing to visit the United States; and providing management and administration for the conduct of foreign affairs. While derived substantially from section 301 of the 1946 act, this paragraph adds a reference to functions performed under the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations, two widely accepted multilateral agreements of particular significance because they codify much of customary international law with respect to diplomatic and consular relations.

Section 104(2) states that members of the Foreign Service shall provide guidance for the formulation and conduct of U.S. foreign policy and Government programs and activities which relate to the foreign relations of the United States.

Carrying forward the substance of section 311 of the 1946 act, section 104(3) provides that members of the Service shall perform functions on behalf of any agency or other Government establishment requiring their service. This provision permits members of the Foreign Service to use the authorities of other agencies at their request where necessary or appropriate. For example, a General Services officer at a post abroad is authorized by this language to use Department of Agriculture contracting authority and funds in executing and administering contracts at the request of the Department of Agriculture.

*Section 105—Merit principles; protections for members of the Service; and minority recruitment*

Section 105 sets forth provisions relating to the application of merit principles, the protection from reprisals of members of the Service, and the establishment of a recruitment program for women and minorities. While this section is not intended to add new substantive law in these areas, the provisions do restate and emphasize requirements of existing law. The section is new in that it has no parallel in the 1946 act and does provide, for members of the Foreign Service, express protection against reprisals for reporting information which does not follow official policy.

Section 105(a)(1) requires that all personnel actions affecting career members and career candidates, including applicants for career candidate appointments, be taken in accordance with merit principles. Section 105(a)(2) defines "personnel action" to include appointments, promotions, assignments, performance pay or special differential awards, step increases, separation decisions, performance evaluations, and any decision, recommendation, examination, or ranking relating to any of these matters.

Section 105(b) requires the Secretary to prescribe regulations to insure that applicants and members of the Service are protected from prohibited discrimination and reprisals for disclosures of information. Members and applicants are protected from discrimination on the basis of race, color, religion, sex, national origin, age, handicapping condition, marital status, or political affiliation. This prohibition parallels the prohibited personnel practices contained in the Civil Service Reform Act of 1978, 5 U.S.C. 2302(b)(1). Individuals are free from reprisals for disclosures of information, other than classified material or other specifically prohibited disclosures, made in the reasonable belief that the information evidences a violation of law, mismanagement, a gross waste of funds, abuse of authority, or a danger to public health or safety. Protection is also provided for similar disclosures made to the Special Counsel of the Merit Systems Protection Board, or to the Inspector General of another agency, or to specially designated individuals.

Paragraph (3) sets forth specific protection for individuals submitting reports, evaluations, or recommendations through separate dissent channels, whether or not the views expressed are in accord with official policy. This makes specific legislative provision for the dissent channel procedures currently in existence in the Department of State, the International Communications Agency, and the Agency for International Development.

Section 105(c) specifically protects disclosures to the Congress and prohibits reprisals against individuals who make disclosures to the Congress.

Section 105(d) mandates the establishment of a recruitment program for women and minorities consistent with provision of the Civil Service Reform Act of 1978 (5 U.S.C. 7201). Furthermore, the section provides for an annual report by each agency head on the recruitment program established, including any affirmative action plans submitted under section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), as well as recommendations for administrative or legislative actions which may be appropriate.

Section 105(e) provides that this section does not limit any other affirmative action or equal opportunity program or affect any right or remedy available to any employee or applicant under existing Federal statutes prohibiting discrimination.

## Chapter 2—Management of the Service

Chapter 2 begins by identifying the officers who have primary responsibility for the management of the Service. Chief among these is the Secretary of State, who is responsible for administration of the Service under the direction of the President. It notes that there are



certain functions that only the Secretary of State may perform, which are expressly vested in the Secretary of State by the act, e.g., issuance of Government-wide regulations, administration of the Foreign Service Retirement and Disability System, and designation of posts as diplomatic or consular in nature.

The Bill also authorizes the Director of the International Communication Agency, the Director of the United States International Development Cooperation Agency and the Secretaries of Agriculture and Commerce (and other agency heads when authorized by law) to utilize the provisions of the act for their Foreign Service personnel.

Chapter 2 requires that the Foreign Service be administered so as to assure maximum compatibility among agencies authorized by law to utilize the Foreign Service personnel system. It encourages among such agencies the development of uniform policies and procedures and consolidation of personnel functions. It continues the existing statutory directive for compatibility between the Foreign Service and other Federal Government personnel systems. These sections were previously in Chapter 12 of the 1946 act.

Chapter 2 incorporates existing law on the authority and responsibilities of chiefs of diplomatic missions with respect to Government agencies and personnel, which has not previously been a part of the Foreign Service Act.

Chapter 2 also provides that the President will establish an inter-agency Board of the Foreign Service to advise the Secretary on matters relating to the Service, including matters concerning interagency compatibility. The Board will be chaired by a career member of the Senior Foreign Service, and will include one or more senior representatives of concerned Federal agencies.

Finally, this chapter provides for a Board of Examiners for the Foreign Service to develop and supervise examination to be given candidates for appointment in the Service. The Board is required to review examinations periodically for possible bias and to report its findings annually to the Secretary of State.

*Section 201—The Secretary of State*

Section 201(a) provides that the Secretary of State shall direct and administer the Foreign Service and coordinate its functions. Section 201(b) provides that those functions which are expressly vested in the Secretary of State by the bill may be performed only by the Secretary of State and not by heads of other agencies utilizing Foreign Service personnel.

Central authority for direction and administration of the Foreign Service was placed with the Secretary of State by the Act To Strengthen and Improve the Organization and Administration of the Department of State (22 U.S.C. 811a), which made the Secretary, rather than various subordinate Department of State officials, responsible for the overall administration of the 1946 act. Among the functions performed exclusively by the Secretary of State are the following: (1) Designation of offices abroad as diplomatic in nature under section 102(a)(3); (2) supervision and direction of the Director General under section 208; (3) functions under section 210 regarding the Board of the Foreign Service; (4) issuance of regulations under section 311 regarding employment of family members of Government

personnel; (5) recommendations to the President under section 312 that members of the Service serve under diplomatic or consular commissions; (6) recommendations to the President under section 405 that members of the Senior Foreign Service be awarded performance pay for especially meritorious or distinguished service; (7) issuance of regulations under section 408 regarding local compensation plans; (8) determinations under section 410(a) and issuance of regulations under section 410(d) regarding compensation for imprisoned foreign nationals; (9) operation of the Foreign Service Institute under chapter 7 of title I of this bill; (10) administration of the Foreign Service retirement and disability system under chapter 8 of title I of this bill; (11) administration of health care programs under section 904; (12) appointment and removal of members of the Foreign Service Labor Relations Board and provision of facilities to such Board under section 1006; and (13) appointment and removal of members of the Foreign Service Grievance Board and provision of facilities to such Board under section 1105.

This bill recognizes that the Secretary of State serves in a dual role, as both the head of the lead foreign affairs agency of Government and as the official accountable for all members of the Foreign Service, regardless of the agency to which they are assigned. In exercising his or her personnel management role, the Secretary of State has the right and the obligation to insure integrity of personnel management in other foreign affairs agencies.

*Section 202—Other agencies utilizing the Foreign Service personnel system*

Section 202(a) authorizes the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency, with respect to their respective agencies, the Secretary of Agriculture with respect to the Foreign Agricultural Service, and the Secretary of Commerce, with respect to those employees of the Department of Commerce performing functions transferred to that Department from the Department of State, by Reorganization Plan No. 3 of 1979, to utilize the Foreign Service personnel system established by this bill. This section makes clear within the basic Foreign Service legislation how the bill's authorities may be used. This supersedes corresponding provisions in the Foreign Assistance Act of 1961 and in Public Law 90-494, 82 Stat. 810 (1968), concerning the authority of the Director of the International Communication Agency, which are repealed by section 2205 of this bill.

This subsection, also, authorizes the Secretaries of Commerce and Agriculture to use these authorities with respect to other personnel of their Departments to the extent the President determines to be necessary.

Section 202(b) makes clear that, except for those functions expressly reserved by the bill to the Secretary of State through use of the term "Secretary of State" rather than "Secretary," heads of agencies which are authorized to utilize the Foreign Service personnel system will exercise the functions vested in the Secretary by the act for their respective agencies.

*Section 203—Compatibility among agencies utilizing the Foreign Service personnel system*

Section 203(a) explicitly mandates the objective, contained in section 101(b)(9), of maximum compatibility in the management and administration of the Foreign Service personnel system among all agencies authorized to utilize that system. By its terms, it extends to all agencies with Foreign Service personnel authority the policy of section 5 of Public Law 90-494, which prescribes that the Foreign Service information officer personnel system shall be compatible within the Foreign Service officer personnel system. The section expressly directs that compatibility be maximized to the extent practicable among agencies employing the Foreign Service personnel system and, to this end, that consultation must occur regularly between the heads of the other agencies and the Secretary of State.

Section 203(b) preserves the authority of the individual heads of agencies over their own personnel. This is consistent with current practice.

No programmatic authority is transferred by this legislation.

*Section 204—Consolidated and uniform administration of the Service*

Section 204 carries forward present provisions of law and practice and encourages the development of uniform policies and procedures among agencies in the administration of the Foreign Service personnel system, as well as encouraging consolidation of personnel functions where feasible. Consolidations pursuant to this section shall be in accordance with section 23 of the act containing the basic authorities of the Department of State, as enacted by section 111(a) of Public Law 95-426, 92 Stat. 967 (the Foreign Relations Authorization Act, Fiscal Year 1979).

*Section 205—Compatibility between the Foreign Service and other Government personnel systems*

Section 205 provides for carrying out the objective of section 101(b) to assure compatibility, to the extent practicable, between the Foreign Service personnel system and other Government personnel systems. This is to be accomplished through consultations among the Secretary of State, the Director of Personnel Management, the Director of the Office of Management and Budget, and the heads of other concerned agencies as determined by the President. This section continues the policy enunciated in section 5 of Public Law 90-494 (82 Stat. 810), of administering the Foreign Service personnel system in conformity with the general policies and regulations of the Government to the extent practicable. The provision contemplates the continuation of existing consultation arrangements under Executive Order 11434 (33 FR 16485), which provides for consultation with the Office of Personnel Management and the Office of Management and Budget.

The authority of the Secretary of State over the Foreign Service generally and over the personnel of the Department of State does not conflict with the authority of the Director of the Office of Personnel Management over the civil service personnel system.

*Section 206—Regulations; delegation of functions*

Section 206 provides the Secretary's basic authority to prescribe regulations and delegate functions to carry out the provisions of the bill.

This section consolidates several provisions of existing law. Sections 302 and 303 of the 1946 act provide authority for regulations by both the President and the Secretary of State. Section 4 of Public Law 81-73 (22 U.S.C. 2652 et seq.), which placed central authority for administering the Service with the Secretary of State, also authorized the Secretary to promulgate rules and regulations necessary to carry out his functions, and to delegate authority to perform any such function to officers and employees under his direction.

In view of this consolidated single authority to prescribe regulations, it is unnecessary to follow the practice of the 1946 act in referring to "regulations as the Secretary may prescribe" throughout the bill. Such references have, therefore, been eliminated as redundant.

*Section 207—Chief of mission*

Section 207 delineates the interagency direction, coordination and supervision authorities and responsibilities of a chief of mission to a foreign country, as well as the responsibilities of United States agencies conducting activities in a country vis-a-vis the chief of mission. This section is almost identical in substance to section 12 of Public Law 93-475 (88 Stat. 1439 (1974)). By its terms, this section describes broadly the "country team" concept which is essential to the effective conduct of U.S. foreign policy abroad. It recognizes the authority and leadership of the chief of mission, as the President's personal representative, over all Government employees, with one exception, whether they are physically located in the Embassy or not. As the chief U.S. representative in the country, the chief of mission must at all times be aware of the activities of those employees responsible to him or her.

Therefore, section 207(a)(1) mandates that the chief of mission, under the direction of the President, shall have a full responsibility for the direction, coordination, and supervision of all Government employees in that country, with the sole exception of employees under the command of a U.S. area military commander. Section 207(a)(2) sets forth the second major responsibility of the chief of mission, which is to keep fully informed at all times of all activities and operations of the United States within the country and to insure that all Government employees in that country comply fully with all directives of the chief of mission.

Section 207(a)(3), inserted at the request of Senator Tsongas, requires the chief of mission to submit a report to the Senate Committee on Foreign Relations and the House Foreign Affairs Committee on his language competence and that of his staff. Senator Tsongas has sponsored a number of provisions in this bill designed to establish in statute the importance of language training and knowledge in the career development of Foreign Service Officers. [See Sections 101(b)(4), 301(b), 307(1) and 603(a).] This particular provision will assist the Congress in its oversight responsibilities in regard to the implementation of the foreign language provision of this Act.

Section 207(b) sets forth the complementary responsibilities of the parent agencies which send employees to serve at posts overseas. They are charged with the responsibility to insure that the chief of mission is kept fully and currently informed of their employees' activities and that those employees comply fully with all directives of the chief of mission. The responsibility of keeping the chief of mission fully informed also extends to employees under the command of a U.S. area

military commander. This section does not make military personnel serving under the command of a U.S. area military commander (e.g., CINCEUR, CINCPAC) subject to the direction, coordination, or supervision of the chief of mission. Such military personnel in the field report to the President, in his capacity as Commander in Chief, through military channels rather than through chiefs of mission. However, as is required by 22 U.S.C. 2321i(e), the chief of mission must be kept fully and currently informed about the activities and operations of such military personnel. Furthermore, all other U.S. military personnel in a foreign country, such as military attachés, are subject to the direction, coordination and supervision of the chief of mission and are included in the definition of "employee" in section 102 of the bill.

The authority of the chief of mission is drawn very broadly not only to enable the United States to carry out its U.S. foreign policy objectives effectively, but also to insure the safety and security of U.S. Government employees. Should an evacuation, for example, be necessary, all U.S. employees, regardless of their parent agency, should comply immediately with any evacuation directives issued by the chief of mission.

*Section 208—Director General of the Foreign Service*

Section 208 provides that there shall be a Director General of the Foreign Service, who shall assist the Secretary of State in the management of the Service and shall perform such functions as the Secretary of State directs. This officer will implement policies developed in order to carry out the objectives of the bill. In particular, the Director General is authorized to assist the Secretary of State in carrying out responsibilities for interagency coordination and compatibility under section 203 through 205 of the bill.

This section alters the appointment procedures for the Director General by making that individual a Presidential appointee, from among the career members of the Senior Foreign Service, subject to the advice and consent of the Senate. Section 201 of the 1946 act provided that the Service would be administered by a Director General appointed by the Secretary of State from among Foreign Service officers of class 1 or the class of career minister. Section 3 of Public Law 81-73 (63 Stat. 111 (1949)) amended the act to vest primary authority for administration of the Foreign Service in the Secretary of State rather than directly in the Director General.

*Section 209—Inspector General*

Section 209 establishes a statutory Office of Inspector General for the Department of State and the Foreign Service patterned after similar offices created in other Federal departments and agencies under the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101 (1978).

The Office will be headed by an Inspector General appointed by the President, by and with the advice and consent of the Senate, without regard to political affiliation from among individuals exceptionally qualified for the position by virtue of their integrity, and their demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, and investigations, or their

knowledge and experience in the conduct of foreign affairs. The Inspector General will report to and be under the general supervision of the Secretary of State, but could be removed from office only by the President. In the event of any such removal, the President would be required to communicate the reasons for removal to both Houses of Congress. The Secretary of State and other officials of the Department are specifically barred from preventing the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

The Inspector General is required to submit an annual report to the Secretary of State describing significant problems, abuses and deficiencies disclosed during the reporting period, and recommending corrective action. The report will also identify significant previous recommendations on which corrective action had not been completed and would include a summary of matters referred to prosecutive authorities and convictions which has resulted. Reports will be submitted to the Secretary not later than April 30 of each year and will be transmitted to appropriate committees of the Congress within 30 days thereafter, together with any comments the Secretary of State considers appropriate.

The Inspector General will be required to report immediately to the Secretary of State whenever he or she becomes aware of particularly serious or flagrant problems, abuses, or deficiencies, and any such reports will be required to be transmitted by the Secretary to appropriate committees of the Congress within 7 days thereafter.

Numerous significant provisions of the Inspector General Act of 1978, Public Law 95-452, 92 Stat. 1101 (1978), are replicated in this bill.

One such provision adopts by reference the full panoply of powers given to Inspectors General in section 6 of the Inspector General Act. Those powers include the power to issue subpoenas, to take depositions, and to hire staff independent of the Secretary. Further, these powers provide a high level of independence for the operations of the Inspector General.

The Inspector General is given a specific charge to assure compliance with the employee rights provisions of section 105.

#### *Section 210—Board of the Foreign Service*

Section 210 provides legislatively for the Board of the Foreign Service, to advise the Secretary of State on matters relating to the Service, such as promoting the objectives of maximum compatibility among agencies authorized by law to use the Foreign Service personnel system as well as compatibility between the Foreign Service and the civil service. This board was originally established by the 1946 act. Its functions were transferred to the President by Reorganization Plan No. 4 of 1965 (30 FR 9353), and the Board was continued thereafter by Executive Order 11264, as amended. Its members include the Agency for International Development, the International Communication Agency, the Department of Commerce, the Department of Agriculture, the Department of Labor, the Office of Personnel Management, the Equal Employment Opportunity Commission, and the Office of Management and Budget. The quasi-judicial functions in la-

bor-management relations and separation for cause heretofore exercised by the Board are now vested by the bill in the appropriate bodies described in chapters 10 and 11, respectively.

*Section 211—The Board of Examiners for the Foreign Service*

Section 211(a) provides a statutory basis for continuation of a Board of Examiners for the Foreign Service to develop and supervise the examinations given to candidates for appointment in the Service. The Board shall consist of 15 members, no fewer than 5 of whom are not Government employees and who possess expertise in the fields of testing or equal employment opportunity. The other members of the Board shall include representatives of agencies, such as USICA and AID which utilize the Foreign Service personnel system as well as representatives of other agencies, such as the Office of Personnel Management, which have responsibility for employment testing.

The Board is charged under section 211(b) with reviewing these examinations periodically to determine whether they have any adverse effects on equal employment opportunity, whether they are valid indicators of job performance, and to find alternatives as necessary. An annual report to the Secretary of State is also required, together with recommendations for improvement.

The Board of Examiners was originally authorized under section 212 of the 1946 act. This provision adds the requirement of insuring that examinations do not undermine the equal opportunity objectives stated in section 101(b)(2)(B) of the bill. The committee also notes that, since the Board's functions are operational, rather than advisory, the Federal Advisory Committee Act does not apply.

Chapter 3—Appointments

Chapter 3 provides the authority for appointments in the Foreign Service, and describes the types of appointments which can be made. Appointment as a chief of mission, ambassador at large, minister, career member of the Senior Foreign Service (SFS) or Foreign Service officer (FSO) may be made only by the President, by and with the advice and consent of the Senate. Other appointments in the Service may be made by the Secretary; these include limited SFS appointments, FSO candidates, and appointments (limited and career) of all other American foreign national personnel.

This chapter is intended to strengthen the career nature of the Foreign Service. In particular, it limits non-career membership in the Senior Foreign Service to not more than 5 percent, and retains the present maximum of 5 years on limited appointments to the Service. It also strengthens language on the desirability of appointing career Foreign Service personnel as chiefs of mission.

All candidates for career appointments must first serve under limited appointments (as is now the case for Foreign Service officers and Reserve officers). The duration of these probationary periods will vary, but may not exceed 5 years. Records of performance by career candidates will be reviewed by boards composed primarily of career personnel before career appointments are granted. Retired members of the Service may be recalled and former career members may be reemployed without undergoing this process.

*Section 301—General provisions relating to appointments*

Section 301(a) restates the current requirement of sections 515, 522, and 534 of the 1946 act which permit only citizens of the United States to be appointed to the Service, except for those appointed for service abroad as consular agents or foreign national employees.

Section 301(b) sets forth the Secretary's authority to prescribe appropriate examinations, including a foreign language test, for appointment to the Service, except for individuals appointed as chiefs of mission or ambassadors at large. Section 212 of the 1946 act had placed this authority with the Board of Examiners of the Foreign Service, but these functions were transferred to the Secretary pursuant to Reorganization Plan No. 4 of 1965 and Executive Order 11264 (31 FR 67). The Board now exercises these functions under a delegation from the Secretary. Under section 211 of this bill, the Board will continue to do so. As has been the case in the past, the nature of these examinations will depend upon the type of appointment involved. In particular, Foreign Service officer candidates will continue to be subject to different examinations than candidates for other personnel categories.

Section 301(c) carries forward in substance section 14 of Public Law 90-494, which is repealed by the bill. It provides that veteran or disabled veteran status shall be an affirmative factor in considering appointments of Foreign Service officer candidates. The weight to be accorded such status will be determined by regulations issued by the Secretary. This provision complements, and does not detract from current veterans' preference laws.

Section 301(d) is definitional in nature and is intended to clarify the use of terminology which appears throughout the bill to describe certain members of the Service. Career members of the Service are those serving under career appointments. Members of the Service who serve under limited appointments, which are for 5 years or less (cf. section 309), are either career candidates or noncareer members of the Service. Individuals who enter the Service as candidates for career appointments must first successfully complete a career candidate program under a limited appointment by the Secretary in accordance with sections 303 and 306(a). Upon successful completion of that program, that individual may then be given a career appointment by the President or by the Secretary as appropriate (cf. sections 302, 303).

*Section 302—Appointments by the President*

Section 302 provides for the appointment of certain members of the Foreign Service by the President and specifies the effect of such a Presidential appointment of a member of the Service.

Section 302(a)(1) specifies the categories of appointments in the Foreign Service which are made by Presidential appointment with the advice and consent of the Senate. These include chiefs of mission, ambassadors at large, ministers, career members of the Senior Foreign Service, and Foreign Service officers. This paragraph carries forward the substance of section 501(a) of the 1946 act with respect to chiefs of mission, and follows section 516 of the 1946 act with respect to Foreign Service officers, except that Presidential appointment of a



Foreign Service officer will now be made after the candidate has performed successfully under a probationary limited appointment by the Secretary. The Senior Foreign Service is a new personnel category created in this bill whose members will be drawn predominantly from the career Foreign Service. This paragraph assures that all such senior career personnel will have equal status, whether they formerly served under a career appointment by the President (i.e., as a Foreign Service officer) or by the Secretary (as a member of the Foreign Service).

Section 302(a)(2)(A) authorizes the President, with the advice and consent of the Senate, to confer upon a career member of the Senior Foreign Service the honorary personal rank of career ambassador. This rank is awarded in exceptional cases of sustained, especially distinguished service.

Section 302(a)(2)(B) is a change of existing law regarding Presidential authority to appoint ambassadors for up to six months without the advice and consent of the Senate. The Administration draft would have revised the existing provision 501(c) of the Foreign Service Act of 1946, as amended—which was initiated by the Foreign Relations Committee in 1972—and made it somewhat less restrictive. The Committee wishes to maintain the existing formulation of the law, but also to add some additional reporting requirements as a result of certain abuses in the use of this authority which have recently been brought to its attention. In particular, the Committee is aware of one recent case where the timing of the President's announcement conferring the personal rank of ambassador upon an individual for 6 months has been significantly delayed in order to allow that individual to have the title of ambassador for a much longer period of time than 6 months. In this particular case, it is also by no means clear why confirmation should not be required. Therefore, the Committee wants to require advance notification and justification for such 6-month appointments in order to maintain careful oversight of this practice.

Section 302(a)(2)(C) states that no additional compensation attaches to the conferral of the rank of career ambassador or of the personal rank of ambassador. This follows current practice.

Section 302(b), derived from section 571(b) of the 1946 act, permits a member of the Foreign Service to retain his or her status in the Service while serving in a position outside the Service to which he or she has been appointed by the President. Specifically, the section provides that such an appointment shall be regarded as an assignment under chapter 5 of the bill. An additional provision permits a member of the Senior Foreign Service to continue to receive the salary of his or her class and to remain eligible for performance pay in lieu of receiving the salary of the position to which the member is appointed. The provision forestalls the anomalous situation where the most able officers risk a reduction in salary in order to accept a Presidential appointment involving increased responsibility. Thus, a member of the Senior Foreign Service, selected because of outstanding qualifications to serve as a chief of mission or Assistant Secretary, would not be required to forgo eligibility for performance pay under section 405 of this bill. This provision parallels 5 U.S.C. 3392(c), which provides for similar retention of status and pay for the Senior Executive Service.

*Section 303—Appointments by the Secretary*

Section 303 provides that members of the Service not required to be appointed by the President shall be appointed by the Secretary. These appointments include limited appointments in the Senior Foreign Service and as Foreign Service officer candidates (career candidates), as well as limited and career appointments of all other American and foreign national personnel in the Foreign Service. The section combines authorities found in sections 522, 531, 541, and 551 of the 1946 act, as well as section 15 of Public Law 90-494.

*Section 304—Appointment of chiefs of mission*

Section 304 states criteria and procedures designed to insure that persons appointed as chiefs of mission are qualified for such appointments.

Section 304(a) (1) carries forward the substance of section 500 of the 1946 act in asserting that individuals appointed as chiefs of mission should possess clearly demonstrated competence to perform the duties. Among the skills desirable are a useful knowledge of the principal language or dialect of the country in which the individual is to serve, and knowledge and understanding of the history, culture, the economic and political institutions, and the interests of that country and its people. Contributions to political campaigns are not considered evidence of competence.

Section 304(a) (4) requires the President to provide the Committee on Foreign Relations of the Senate, with each nomination for a chief of mission position, a report on that nominee's demonstrated competence to perform the duties of chief of mission in the country in which he or she is to serve. The purpose of this provision, sponsored by Senator Pell, is to assist the Committee on Foreign Relations in the exercise of its Constitutional advice and consent responsibilities with respect to ambassadorial nominations.

Section 304(b) provides that the Secretary of State shall furnish to the President periodically a list of career members of the Foreign Service who are qualified to serve as chief of mission, together with pertinent supporting information. This provision carries forward the substance of section 502 of the 1946 act. Paragraph (2) requires each nominee to file with the Committee on Foreign Relations and the Speaker of the House a report of contributions by that individual and his or her family within the past 4 years. This provision is carried forward from section 6 of the Department of State Appropriations Authorization Act of 1973 (Public Law 93-126, 87 Stat. 491).

*Section 305—Appointment to the Senior Foreign Service*

Section 305 sets forth provisions regarding appointment to the Senior Foreign Service. The complexity and diversity of international relations and the changing diplomatic environment have placed broader and more demanding requirements on governments and thus a greater premium on the quality and effectiveness of their principal diplomatic representatives. A new Senior Foreign Service Officer Corps, which parallels the general and flag officer ranks of the military and the new Senior Executive Service, offers an effective framework

to foster greater development of leadership and policymaking capabilities both at the national and the international levels.

If standards of excellence are not maintained, this bill provides separation procedures for members of the Senior Foreign Service, as well as for other members of the Foreign Service. This permits control of the size of senior ranks through performance standards rather than age-related procedures.

The Senior Foreign Service will differ from present practice in a number of ways. It will utilize a senior threshold entry mechanism which will, for the first time, couple rigorous standards of evaluation with a relatively short time limit of eligibility for promotion, similar to the "passover" system long used by the military service. It will place much heavier weight on performance, rather than on seniority, for advancement and retention. There will be shorter time-in-class limits for each of the three planned classes in the Senior Foreign Service, with a minimum of 3 year's time-in-class for each class, such as counselor, minister-counselor, and minister. The Senior Foreign Service will thus designate rank by title rather than numbered grades as in the lower ranks.

The bill also provides multiple exit mechanisms to enhance orderly progression through entry, retention, and exit, thereby permitting more regular advancement both within the Senior Foreign Service and in the lower ranks. The existence of this new Senior Foreign Service Corps as a separate entity with higher risks but greater rewards than previously offered will, over time, lead to a reputation for proven excellence and job opportunities which will be a strong incentive to all officers in the Foreign Service.

Section 305(a) provides that appointment to the Senior Foreign Service shall be to a salary class established under section 402 and not to a position. This is necessary to preserve, with respect to the Senior Foreign Service, the general principle that in the Foreign Service, rank follows the person rather than the position. The provision also continues for senior ranks the practice established by section 511 of the 1946 act of appointment to a specific salary class.

Section 305(b) provides that members of the Senior Foreign Service serving under limited appointments shall not exceed 5 percent of the total number of members. Because of the unique nature of the Peace Corps and the limited tenure attaching to its personnel, members of the Senior Foreign Service assigned to the Peace Corps are excluded from this calculation. Furthermore, a person serving in a career Government position outside the Foreign Service who accepts a limited Senior Foreign Service appointment, either as a career candidate or for a limited period with reemployment rights (cf. section 310, *infra*), would not fall within the 5-percent limitation. Any other individual serving under a limited Senior Foreign Service appointment (including any other Senior Foreign Service career candidate) would be considered "noncareer" for purposes of this limitation.

This limitation parallels the 10-percent limitation on noncareer personnel at the senior levels of the civil service. The 5-percent limitation is intended to limit noncareer appointments, while preserving the ability to make necessary political or noncareer appointments.

*Section 306—Career appointments*

Section 306(a) provides that candidates for career appointments must serve a probationary period, expressed as a limited appointment, for a trial period determined by the Secretary. This probationary period, which the committee notes is presently 4 years for officer candidates, permits the candidate to receive the requisite training and to decide whether to make a career commitment. At the same time, it gives the Department an opportunity to evaluate performance, to determine whether the candidate measures up to the promise indicated by his or her success in the examination process. Although the duration of the trial period is left to the Secretary's determination, the provision specifies that the career candidate must serve under a limited appointment, which under section 309 of the bill may not exceed 5 years. Furthermore, different periods may be prescribed, as appropriate, for various occupational categories of Foreign Service members.

Career members of the Senior Foreign Service will normally be appointed by the promotion (cf. section 601) of career personnel who will have established records of performance in the Foreign Service. Career candidates at the Senior Foreign Service level will be appointed from outside the career Service only in extraordinary cases where the needs of the Service cannot otherwise efficiently be met. The intent of the Department is that such candidates will serve not less than 4 years in probationary status so that their qualifications for career status can be thoroughly evaluated.

The limited appointment trial period prescribed in this section is adapted from two provisions of existing law. Section 516(c) of the 1946 act, enacted in 1977, provides that Foreign Service officer candidates may be given limited appointments of up to 5 years as Foreign Service Reserve officers, a category abolished under this bill. Section 15(a) of Public Law 90-494 provides that Foreign Service Reserve officers must be given unlimited tenure or separated from the Service between their third and fifth years as Reserve officers.

Section 306(b) states that decisions by the Secretary concerning whether or not to offer or to recommend career appointments shall be based upon the recommendations of boards composed entirely or primarily of career members of the Service who will evaluate the fitness and aptitude of the candidates for the work of the Service. This extends for general application in the Service (including the Senior Foreign Service) the "tenure board" procedure currently used to evaluate Foreign Service officer candidates.

*Section 307—Entry levels for Foreign Service officer candidates*

Section 307 sets forth a structure for the initial entrance of an individual into the Foreign Service as a Foreign Service officer candidate in order to promote a certain uniformity in the system while preserving needed flexibility. The section provides for the entrance of a Foreign Service officer candidate at a salary class under section 404 no higher than class 4 unless the Secretary determines otherwise in individual qualifications and experience of a candidate, the foreign language competence or the needs of the Service warrant a higher designation, or that at the time of assignment the individual is already serving under a career appointment in the Service and is receiving a salary

equal to or higher than the normal entry level for Foreign Service officer candidates. The former exception is intended primarily for lateral entrants from outside the Foreign Service. The latter exception applies to a career member of the Service who is not a Foreign Service officer, but wishes to become one.

Section 307 is derived in part from sections 516 and 517 of the 1946 act. Section 516 provided that Foreign Service officers would normally be appointed to class 8, although an initial appointment to class 7 could be made if the age, experience, and other qualifications of the appointee warranted it. Section 517 permitted appointment of Foreign Service officers with 4 years of service with a Government agency (or 3 years of such service if over age 30) to any Foreign Service officer class determined to be warranted by the candidate's age, experience, and qualifications.

Section 307 continues the policy of a normal Foreign Service officer entry level, while permitting lateral entry to higher salary classes where individual qualifications warrant it. However, this section avoids specifying the factors in as rigid a manner as section 517 of the 1946 act had done.

*Section 308—Recall and reemployment of career members*

Section 308 carries forward the authority of the Secretary to recall to active duty any retired career members of the Service, and to reappoint former career members without requiring them to complete a new period in probationary status. This section is derived from section 520 of the 1946 act.

Section 520 required reappointment by the President except where the officer was recalled on a temporary or limited basis to a class no higher than that held at the time of retirement. Section 308(a) requires Presidential appointment only where the recall would involve promotion into or within the Senior Foreign Service. This is in keeping with section 601(a) of the bill, which provides that promotions within the Foreign Service schedule (cf. section 403) are effected by assignment by the Secretary and not by appointment by the President to the higher class, and that promotion into and within the Senior Foreign Service shall be by Presidential appointment.

Section 308(b) also provides that former career members of the Service reappointed in the Service need not serve probationary appointments under section 306 and may be assigned to a salary class appropriate to their qualifications.

*Section 309—Limited appointments*

Section 309 provides for limited appointments in the Service which may not exceed 5 years and, with the exception set forth in section 311(a), may not be extended or renewed. A subcategory of limited appointments, the temporary appointment, is defined as an appointment limited to a period of 1 year or less. This subcategory is necessary to facilitate the identification of those limited appointments whose incumbents are ineligible, under civil service law, for certain benefits such as leave accrual and participation in the civil service retirement and disability system.

Section 309 is derived in part from section 531 of the 1946 act, which authorizes the Secretary to make temporary or limited ap-

pointments to the Staff Corps, and section 522, which authorizes limited appointments in the Foreign Service Reserve. The language of section 309 is more generalized than its predecessors, while it continues to protect the basic career structure of the Foreign Service personnel system.

*Section 310—Reemployment rights following limited appointment*

Section 310, derived from section 528 of the 1946 act, provides that an employee of a Federal agency who accepts a limited appointment in the Service with the consent of his or her agency head is entitled to reemployment by that agency, in accordance with 5 U.S.C. 3597, in his or her former position or in a corresponding or higher position upon expiration of the limited appointment. Section 310 is general in scope and is consistent with section 309, whereas section 528 of the 1946 act applied only to limited service as a Foreign Service Reserve officer.

As in section 528 of the 1946 act, this reemployment right includes entitlement to any within-grade salary increases the employee would have received in accordance with law or regulation had he or she remained with the agency instead of accepting the limited appointment. Such increases could include merit pay, if applicable, under civil service regulations.

*Section 311—Employment of family members of Government employees*

Section 311 prescribes policies for the employment in the Foreign Service of family members of Government personnel abroad. The section provides that equal consideration shall be given to hiring qualified family members of Foreign Service and other Government personnel for positions abroad not customarily filled by career personnel, including foreign national positions. This does not, however, preclude the possibility that, in appropriate instances on a temporary basis, family members may fill positions which are usually filled by Foreign Service personnel. Some of the more interesting jobs offered abroad are those which are filled by career personnel, but which become vacant for several months or longer, due to the inability to find a replacement immediately, or to a delay in the arrival of a replacement. This section would permit the temporary hiring of qualified dependents to fill such positions. In no case may this authority be used to avoid hiring career personnel or to delay the arrival of a replacement. Its effect should be to provide needed personnel to fill employment gaps which unavoidably occur at posts overseas. Accordingly, section 311(b) specifically adds the caveat that employment of family members must not be used to avoid fulfilling the need for full-time positions. These provisions derive from section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 856, and from section 401(a) (2) of the Foreign Relations Authorization Act, Fiscal Year 1979, Public Law 95-426, 92 Stat. 977.

Section 311(a) also adds the administrative requirement that such family members will serve under renewable limited appointments, an exception to section 309, and will be paid either under the Foreign Service schedule or under a local compensation plan. The choice be-

tween a U.S. and a local salary rate will normally depend upon the usually applicable pay schedule for the position concerned, although the Committee urges the Department to utilize the U.S. rate wherever possible.

This section does not solve the problem of the Foreign Service spouse or dependent who is forced to give up a Government position in order to accompany a Foreign Service employee abroad. The solution lies in providing reemployment rights and/or credit toward career status in the civil service. Such status cannot at present be earned in temporary jobs. It is earned only through permanent employment and then only if an individual remains in such position for at least 3 years without a break in service of more than 30 days. The mobility of Foreign Service life and the fact that all Government jobs abroad are temporary, except for those allocated to the career Service, make it virtually impossible for a spouse or dependent to earn civil service status.

Section 311(c) authorizes the Secretary of State to prescribe regulations to govern all agencies in the employment at posts abroad of family members of Government personnel. This provision parallels section 411(d) of the 1946 act, as amended in 1978 and 1979. The regulations prescribed under section 311(c) are designed to set forth uniform standards and criteria, so the committee expects that deviations from the regulations will only occur for amply justified reasons. The Secretary of State will continue to consult with the Director of the Office of Personnel Management in developing regulations affecting nonforeign affairs agency personnel.

*Section 312—Diplomatic and consular commissions*

Section 312 combines several provisions of law relating to diplomatic and consular commissions. Specifically, it provides for the commissioning of diplomatic and consular officers by the President upon the recommendation of the Secretary of State, with the advice and consent of the Senate. The practice of providing individuals with diplomatic and consular commissions is derived from international practice and is necessitated both by international treaty requirements and by numerous U.S. Federal and State laws. The commission itself permits the holder to exercise specified diplomatic and consular functions necessary to the conduct of U.S. foreign policy.

Section 312 combines sections 512, 524, and 533 of the 1946 act which relate to the commissioning of Foreign Service officers, Foreign Service Reserve officers, and Foreign Service Staff personnel, respectively. The authority contained in section 533 of the 1946 act for the Secretary to commission a staff officer or employee as vice consul is expanded to permit such commissions to be granted to any member of the Foreign Service who is a U.S. citizen. This authority will be available, for example, to commission as a vice consul a Foreign Service officer candidate. The substance of section 11 of Public Law 90-494, 82 Stat. 810, relating to the commissioning of Foreign Service information officers as diplomatic or consular officers, is also included as part of section 312.

In requiring that members of the Service commissioned under this section perform all official functions under such commissions, section

312(a) is consistent with the provisions of section 512, 524, and 533 of the 1946 act. In providing that members of the Service with diplomatic or consular commissions may perform any function which any category of diplomatic officer (other than a chief of mission) or consular officer is authorized by law to perform, section 312(b) follows modern diplomatic and consular practice.

Section 312(c) adopts verbatim the language of section 513 of the 1946 act which states that the Secretary of State shall define the limits of consular districts. This and all other functions of the Secretary of State under section 312 may not be exercised by the heads of any other agencies employing Foreign Service personnel.

#### Chapter 4—Compensation

Chapter 4 governs the basic salaries of Foreign Service personnel, as well as additional compensation based on performance or conditions of service. Chiefs of mission will continue to receive salaries at one of the annual rates specified for levels II through V of the Executive Salary Schedule. However, career SFS personnel who are appointed as chiefs of mission may elect to continue to receive their normal Foreign Service salary and continue to compete for performance pay.

The President will establish a salary range for the SFS comparable to the salaries established by the President for the SES under the Civil Service Reform Act. Below this level, a single Foreign Service salary schedule for American personnel will supersede the two overlapping schedules that now exist for Foreign Service officers and Reserve officers on the one hand and Staff officers and employees on the other. Foreign national employees and consular agents will be paid on the basis of locally prevailing compensation practices.

Members of the SFS will be appointed to a salary class, and their promotions will be effected by reappointment to a higher class. Foreign Service officers below the senior threshold, will be assigned to an appropriate salary class by the Secretary, and their promotions will be effected without interruption in their Presidential appointments. This change will permit all Foreign Service personnel of comparable rank who are promoted to have their salaries adjusted at the same time under a single procedure.

Chapter 4 establishes a performance pay plan for the SFS similar to that provided by the Civil Service Reform Act for the SES. Recommendations concerning awards of performance pay will be made to the Secretary by selection boards. Additional awards for especially meritorious or distinguished service may be made by the President, as is the case for the SES.

Within-class step increases for all Foreign Service Schedule personnel will be provided in a uniform manner under a single, simplified authority contained in chapter 4. Provisions are included for use of multiple step increases for outstanding performance, and for withholding them for mediocre performance.

##### *Section 401—Salaries of chiefs of mission*

Section 401(a) provides that the salary level of a chief of mission shall be set at one of the annual rates provided by law for levels II



through V of the Executive Schedule. The only exception exists for members of the Senior Foreign Service who are appointed as chiefs of mission. Under section 302(b) above, they may elect to receive the salary of their class and to remain eligible for performance pay.

This section is consistent with sections 411 of the 1946 act, under which chief of mission positions were divided into four salary classes ranging from level II to level V of the Executive Schedule. The revised provisions do not require the President to use the entire range of salary rates. Instead, he could decide to establish a single salary rate for all chiefs of mission.

Section 401(b) sets forth a transition mechanism for appointments of new chiefs of mission. It provides that the salary of a chief of mission commences upon the effective date of the appointment. Furthermore, the official services of the predecessor chief of mission may continue for a period not to exceed 50 days following relinquishment of charge of the mission, if the Secretary determines that this is necessary. This procedure provides a workable transition mechanism.

Section 401(b) carries forward the substance of section 431 of the 1946 act. The provision of section 431(a) of that act stating that a chief of mission is not entitled to salary while absent from his post without authorization or justification has been deleted as unnecessary. A further provision in section 431(a) of the 1946 act which, with respect to a person appointed as chief of mission at a second post, delineates entitlement to a higher salary class, is deleted as superfluous in view of the general prohibition in 5 U.S.C. 5533 against dual pay for more than one position. Section 431(c), authorizing supplementary compensation for a Foreign Service officer appointed chief of mission at a salary less than his or her Foreign Service salary, has been replaced by the option, in section 302(b) of this bill, for a member of the Senior Foreign Service to receive his or her Senior Foreign Service salary in lieu of the salary of the appointed position.

#### *Section 402—Salaries of the Senior Foreign Service*

Section 402 authorizes the President to prescribe salary classes for the Senior Foreign Service, as well as appropriate titles for each class. The salary rates are to be set consistent with the maximum and minimum rates payable for the Senior Executive Service which pursuant to 5 U.S.C. 5382 may not be more than the rate for level IV of the Executive Schedule. These rates will be adjusted at the same time and in the same manner as rates of basic pay are adjusted for the Senior Executive Service.

It is expected that the President will prescribe three salary classes for the Senior Foreign Service entitled Counselor, Minister-Counselor, and Minister. These would replace Classes 2, 1 and Career Minister under the 1946 act.

#### *Section 403—Foreign Service Schedule*

In the Fiscal Year 1979 Foreign Relations Authorizations Act, Congress directed the administration to conduct a study of the pay linkage between the Foreign Service and the Civil Service. This pay linkage was set in 1962, but has not been adjusted since, even though the Federal Pay Comparability Act of 1970 requires the President to adjust these linkages annually. The result of the Congressional direc-

tive was an exhaustive comparison of compensation among the Foreign Service, the Civil Service and the private sector by the management consulting firm of Hay Associates. The Hay Associates study, completed in May 1979, confirmed that the Foreign Service is significantly undergraded as compared with the civil service.

In light of these findings, the Committee urges the Administration to utilize this section 403 to establish a pay schedule which would be comparable to that of the civil service. This section would authorize the President to establish a Foreign Service Schedule which shall consist of nine salary classes. The maximum salary rate for the highest class (Class 1) will not exceed the maximum rate of basic pay for a GS-15 of the General Schedule.

In adopting this section, the Committee takes note of the fact that civil service employees earn on the average about 25 percent more during their careers than their Foreign Service counterparts, the Committee expects the Administration to correct this inequity.

*Section 404—Assignment to a salary class*

Section 404(a) authorizes the Secretary to assign to an appropriate salary class all Foreign Service officers and Foreign Service personnel other than those performing routine duties who are paid in accordance with section 407 and family members of Government employees who are paid in accordance with local compensation plans under section 408. This provision makes a change from section 413 of the 1946 act, under which Foreign Service officers are appointed by the President to a particular salary class. This has produced a system in which each promotion of a Foreign Service officer requires a new appointment and Senate confirmation. By separating appointments from salary classification below the senior levels, the bill avoids the delays which have attended promotions of Foreign Service officers, as compared with promotions of Reserve officers of comparable rank who are promoted without the need for reappointment.

Section 404(b) expresses the rank-in-person principle of the Foreign Service by stating that the salary class to which a member of the Service is assigned is not affected by the position or post to which he or she is assigned to serve. This means that rank in the Foreign Service is personal as in the military, and not dependent on the position to which the individual is assigned as in the civil service. Rank-in-person has been a basic principle of the Foreign Service personnel system since the Foreign Service was first established, and is necessary to the functioning of this highly mobile corps.

Section 404(b) also states, principally as a cross-reference, that a change in the salary class of a member of the Senior Foreign Service or a member paid under the Foreign Service schedule must be in accordance with the promotion provisions of chapter 6 of title I of this act, except as authorized by reduction-in-force procedures specified in chapter 35 of title 5, United States Code. The Secretary of State is authorized to prescribe implementing regulations providing for retention of pay when reduction-in-force procedures are applied.

*Section 405—Performance pay*

Section 405 authorizes the award of additional compensation for outstanding performance to career members of the Senior Foreign

Service and career candidates in the Senior Foreign Service. These awards of performance pay parallel those available to members of the Senior Executive Service under 5 U.S.C. 5384.

Section 405(a) provides that such awards will be in addition to basic salary and will not be limited by any ceiling based on the amount of compensation received by the chief of mission or other member of the Service. The first of these provisions parallels 5 U.S.C. 5384(a)(2). The second supersedes a longstanding administrative limitation that a chief of mission must earn at least \$100 per year more than any subordinate personnel at post. The committee believes that this limitation has no practical utility, particularly in light of the fact that members of the Senior Foreign Service who are appointed as chiefs of mission have the option, under section 302(b), of retaining the salary and benefits attaching to them as members of the Senior Foreign Service.

Section 405(b) states that performance pay awards shall take into account criteria established by the Office of Personnel Management for performance awards under 5 U.S.C. 5384 and for rank awards under 5 U.S.C. 4507 to members of the Senior Executive Service. Criteria and requirements unique to the Foreign Service shall also be taken into account. The section also establishes limits on the number and amount of performance pay awards which are consistent with the limits imposed with respect to the Senior Executive Service under 5 U.S.C. 4507 and 5 U.S.C. 5384. Section 405(b)(1) stipulates that no more than 50 percent of the members of the Senior Foreign Service may receive performance pay awards in any one year. Section 405(b)(2) states that these awards may not generally exceed 20 percent of the member's basic rate of salary and section 405(b)(3) provides that up to 6 percent of the members of the Senior Foreign Service may receive performance pay awards that exceed the 20 percent limitation, with a general limit of \$10,000, except that 1 percent may receive such awards up to \$20,000.

The Committee notes that existing appropriations legislation would restrict the percentage of eligible recipients of performance pay to 25 percent of the Senior Foreign Service. Senator Percy suggested that such limitation might be desirable in general in order to make the performance pay program more selective and competitive than the 50 percent allowed under this section. After hearing additional testimony on this question, the Committee decided not to reduce the overall percentage to 25 percent in this legislation, but to keep that possibility under consideration for the future. The Committee did agree, at Senator Percy's suggestion, to endorse the percentage guidelines for performance pay issued by the Office of Personnel Management in response to the overall 25 percent limitation required by the appropriations bill. Those guidelines are as follows:

- (1) Payments of 20 percent (of the rate of annual salary) should be limited to no more than 5 percent of those receiving bonuses.
- (2) Payments of 17-20 percent should, in total, be limited to no more than 10 percent of those receiving bonuses.
- (3) Payments of 12-20 percent should, in total, be limited to no more than 25 percent of those receiving bonuses.

Section 405(b)(4) limits the total salary plus performance pay for members of the Senior Foreign Service to that provided by law for level I of the Executive Schedule. The same limitation is imposed on members of the Senior Executive Service by 5 U.S.C. 5383(b).

Section 405(c) provides that performance pay awards up to the 20 percent limitation in paragraph (b)(2) above shall be determined on the basis of recommendations by selection boards (cf. section 602). This provision parallels 5 U.S.C. 5384(c), which states that agencies shall award performance pay to members of the Senior Executive Service based on the recommendations of performance review boards established pursuant to 5 U.S.C. 4314. The determination of the total amount which shall be made available in any one year is a budgetary determination left with the individual heads of the agencies, which means that members of the Senior Foreign Service are not entitled to performance pay.

Section 405(d) authorizes the President to make grants of performance pay exceeding the 20 percent limitation as provided in section 405(b)(3). Such Presidential awards, available to no more than 6 percent of the Senior Foreign Service and in amounts no greater than \$10,000 (or up to \$20,000 for not more than 1 percent of the Senior Foreign Service), shall be based upon recommendations by the Secretary of State. In order to produce a list of recommendations, the Secretary of State will receive annually from all concerned agencies nominations of Senior Foreign Service personnel who have performed especially meritorious or distinguished service. The agency nominees will be reviewed by special interagency selection boards. The Secretary of State will then make recommendations to the President on the basis of the review and evaluation by these boards.

*Section 406—Within-class salary increases*

Section 406 combines the substance of sections 625 and 642 of the 1946 act, which provide separately for periodic within-class salary increases for different categories of Foreign Service personnel whose work has met the requisite standards.

*Section 407—Salaries for Foreign Service personnel abroad who perform routine duties*

Section 407(a) authorizes the Secretary under certain circumstances to establish salary rates for Foreign Service personnel which are lower than those prescribed in the Foreign Service Schedule. The lower limit is set at the then applicable minimum wage rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 20(a)(1)).

Section 407(b) specifies the individuals who may be hired at these salary rates. They must be U.S. citizens recruited abroad, who are not available or are not qualified for assignment to another Foreign Service post, and who perform duties of a more routine nature than are generally performed by Foreign Service personnel assigned to the lowest salary class in the Foreign Service schedule. This authority permits the hiring of individuals who are U.S. citizens resident abroad to perform routine work at posts abroad, either on a full-time or part-time basis, where it is unnecessary or unproductive to assign the job to a member of the Foreign Service.

*Section 408—Local compensation plans*

Section 408 authorizes the Secretary of State to establish compensation plans, which should include classification systems, for foreign national employees of the Service, and for U.S. citizens employed in the Service abroad pursuant to section 311 of the bill who are family members of Government employees. This provision follows section 444(a)(1) of the 1946 act in directing that consistent with the public interest, local compensation plans shall be based upon prevailing wage rates and compensation practices in the locality. It also directs that local compensation plans must provide for compensation of family members employed pursuant to section 311 at rates no less than the minimum wage rate set by the Fair Labor Standards Act.

Furthermore, the section provides that leaves of absence with pay (such as annual and sick leave) may be granted to local employees in accordance with local law or customs without regard to the limitation on such leave contained in 5 U.S.C. 6310. An express reference to participation in local social security plans is added to emphasize the objective of maximum compliance with compensation benefits provided under local law. This provision is carried forward from section 402 of the Foreign Relations Authorization Act, Fiscal Year 1979. It permits the agencies to comply fully with maternity and sick leave provisions of certain local social insurance programs which would otherwise be prohibited under U.S. law, thus preventing the agency from participating in the entire local program. Local social insurance programs are often comprehensive and frequently include health programs and various types of income maintenance programs such as sick leave and retirement. In order to participate on behalf of its local staff, the Department usually must participate in all phases of the local social insurance programs. If a particular country plan happens to provide more leave than is authorized under U.S. law, local employees of the U.S. Government would be denied the opportunity to participate in any of the other programs, including retirement.

The establishment of local compensation plans under which local employees receiving prevailing local wage rates and benefits tends to eliminate complaints from host governments and employees over compensation issues and improves morale. It also avoids undesirable litigation which would result from failure to comply with certain labor laws and practices in foreign countries.

Section 408(a)(2) is also derived from section 444 of the 1946 act. It authorizes the Secretary to make supplemental payments to civil service annuitants who are former foreign national employees or their survivors in order to offset losses caused by the appreciation of a foreign currency relative to the dollar. Such payments are permitted only where the employee's salary was fixed in terms of the foreign currency and the retirement benefits received by the annuitant are less than the average retirement benefits received by comparable retirees from other local organizations.

Section 408(b) authorizes all Federal entities to administer their programs for foreign national employees or family members of Government personnel serving abroad in accordance with section 408 and other applicable provisions of this bill. This subsection follows closely section 444(b) of the 1946 act.

In order to promote efficiency and uniformity among agencies, section 408(c) authorizes the Secretary of State to prescribe regulations governing the establishment and administration of local compensation plans under this section for all Government agencies and establishments. This authority was recently enacted in section 107(b) of Public Law 96-60, 93 Stat. 397 (August 15, 1979), amending section 444(b) of the 1946 act.

*Section 409—Salaries of consular agents*

Section 409 directs the Secretary of State to establish salary rates for consular agents consistent with prevailing wage rates in the locality and the workload of the consular agency. In the case of consular agents who are U.S. citizens, the salary rate may not be less than the applicable minimum wage rate under the Fair Labor Standards Act. This section derives from sections 418 and 445 of the 1946 act, but will provide somewhat greater flexibility in setting salary rates for consular agents on a case-by-case basis. All functions relating to consular agents under this bill are vested exclusively in the Secretary of State.

Consular agents may be either U.S. citizens or foreign nationals. Their function is to provide some consular and related services for U.S. citizens and foreign nationals at locations abroad where no Foreign Service post is located. The committee feels that the existence of consular agencies is an efficient and desirable way to represent U.S. interests where it is not feasible or practical to establish a full-fledged U.S. post. Given the astronomical increase in travel by U.S. citizens in recent years, consular agents are often the only assistance available, particularly in larger countries where sheer distances make communication with a U.S. post difficult.

*Section 410—Compensation for imprisoned foreign national employees*

Section 410 reenacts section 444(c) of the 1946 act, without substantive change. The provision was originally enacted as part of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105).

Section 410(a) authorizes agencies to compensate current or former foreign national employees for periods of imprisonment by a foreign government determined by the Secretary of State to have resulted from employment with the U.S. Government. Such compensation is limited to an amount approximately equal to the salary and benefits the employee would have received had the employee been employed by the United States during the period of imprisonment. Agency heads are also authorized to exercise with respect to imprisoned foreign national employees or former employees the powers provided under subchapter VII of chapter 55 of title 5, United States Code, relating to missing U.S. employees.

Section 410(b) provides that a period of imprisonment compensable under section 410(a) is to be considered creditable employment for purposes of other benefits, except for civil service retirement (unless the employee was a participant in the civil service retirement and disability system) and for compensation for work injuries unless the individual was employed by the Government at the time of imprisonment.

Section 410(c) provides that a claim for compensation under this section must be filed within 3 years after the release of the claimant

from imprisonment or within 3 years after the claimant's first opportunity thereafter to file a claim. The agency head shall determine the date of the claimant's first opportunity to file a claim.

Section 410(d) continues the authority of the Secretary of State to prescribe regulations governing payments under this section by all agencies.

Employees and former employees who have been arrested in the past have frequently been charged with espionage or treason because of their association with the United States. Imprisonment is used as a method of harassing the United States and discouraging capable employees from working at U.S. embassies and consulates.

The committee notes that the United States relies heavily on foreign national employees to provide essential support services to embassies, consulates, and other U.S. missions and offices, as, indeed, is the case with other governments. Many alien employees spend their entire careers working for the United States. They perform their duties faithfully and well and certainly deserve fair treatment from the United States. An individual who, as a result of service to the United States, suffers the harsh treatment of imprisonment, which involves the loss of liberty, time, and personal comfort as well as income, deserves to be compensated at the very least for the income lost during the period of imprisonment. This section makes it possible for the United States to pay the compensation that equity demands.

*Section 411—Temporary services as principal officer*

Section 411 authorizes the Secretary of State to provide additional compensation to a member of the Service who serves temporarily as principal officer during the absence or incapacity of the principal officer. Such additional compensation is limited to the difference between the member's salary and the basic salary provided for the principal officer. The Secretary of State will determine the initial period which must elapse before the additional salary payments will be made, so that members of the Service who assume the duties of principal officer for 1 or 2 days, for example, are not eligible for additional compensation. Present practice is to provide the additional compensation if the member serves as principal officer for longer than 30 days.

Section 411 combines the provisions of sections 421 and 422 of the 1946 act, which deal separately with temporary service as the head of a diplomatic and a consular post and is not governed by the prohibitions against extra pay contained in 5 U.S.C. 5535, 5536. Since the substance of the two sections is the same, it is unnecessary to preserve the distinction between diplomatic and consular posts.

*Section 412—Special differentials and premium pay*

Section 412(a) authorizes the Secretary to pay special differentials in addition to other compensation to Foreign Service officers who are required to perform additional work on a regular basis in substantial excess of normal requirements. This subsection is identical in substance to section 451 of the 1946 act. The committee expects that, in implementing this section, the heads of agencies will provide this compensation to any member of the Service who meets the criteria, subject only to budgetary considerations and the requirements of section 412(b). The intent of the provision is to recognize the unique character

of work requirements in the Foreign Service, which do not lend themselves to a 5-day, 40-hour week, thus there should be no arbitrary limits set on the number of individuals who can receive special differentials in a given year.

*Section 413—Death gratuity*

Section 413 reenacts section 14 of the Department of State Basic Authorities Act of 1956 which authorizes payment of death gratuities to dependents of members of the Foreign Service, including U.S. representatives to an international organization or commission and foreign national employees, for members of the Foreign Service killed in the line of duty. Gratuities are equivalent to 1 year's salary at the time of death.

Sections 413 (b) and (c) set forth the criteria for payment of the gratuity and the dependents to whom it shall be paid. Section 413(d) defines the terms used in this section.

Death gratuities were first authorized in 1974 in recognition of the heightened risks from terrorist acts abroad faced by Foreign Service employees. This provision authorizes benefits for survivors of employees killed abroad in the line of duty, whether by terrorist attack or job-connected causes.

**Chapter 5—Classification of Positions and Assignments**

Chapter 5 continues the existing authority of the Secretary to classify Foreign Service positions in the Department and at posts abroad, and to assign Foreign Service personnel to those positions. A new subsection requires that members of the Service not be assigned to a post in a particular geographic region solely on the basis of race, ethnicity, or religion.

This chapter also facilitates interchange with the civil service by authorizing the assignment of non-Foreign Service personnel to Foreign Service positions for specified tours of duty and the assignment of Foreign Service personnel to civil service positions. A new feature of the bill is a limitation of 4 years on the assignment of members of the Foreign Service to non-Foreign Service positions.

Chapter 5 retains the existing 8-year limitation on the assignment of Foreign Service personnel to duty within the United States. In addition, it requires that all career Foreign Service personnel accept the obligation to serve abroad as a condition of employment.

At the same time, the bill recognizes the need for periodic service by Foreign Service personnel within the United States. It directs the Secretary to seek to assign all career personnel in the Service to duty within the United States at least once during each 15 years of service. In addition, chapter 5 provides authority for members of the SFS to be granted sabbaticals comparable to those available to members of the SES.

*Section 501—Classification of positions*

Section 501 restates the Secretary's basic authority to designate and classify positions to be occupied by members of the Foreign Service including positions at posts abroad and in the Department, but excepting chief of mission positions. Positions will be classified accord-



ing to the Foreign Service salary classes established by the President in chapter 4 but, recognizing the uniqueness of the Foreign Service, without regard to chapter 51 of title 5, United States Code relating to classification in the civil service. In classifying positions at posts abroad, the Secretary is directed to give appropriate weight to job factors relating to overseas service and to compensation practices of U.S. corporations abroad. Section 501 combines and simplifies the two separate subsections of section 441 of the 1946 act.

*Section 502—Assignments to Foreign Service positions*

Section 502(a)(1) restates the authority of the heads of agencies to assign members of the Foreign Service to any position in the Service in which the member is eligible to serve, regardless of agency, provided only that the head of the concerned agency concurs. Section 502(a)(2) states the proviso that members of the Service must not be assigned to a particular geographic area solely on the basis of race, ethnicity or religion.

Section 502(b) states the general policy that Foreign Service positions will normally be filled by the assignment of members of the Service. Recognizing that the necessary Foreign Service practice of setting specified tours of duty may make it impossible to observe this policy at all times, the paragraph provides some flexibility by allowing the Secretary to assign non-Foreign Service employees of the Department and personnel of other agencies (under interagency agreements) to Foreign Service positions.

Section 502(c) authorizes the President to assign a career member of the Service as Chargé d' Affaires or to act otherwise as head of a mission for such period as necessary. This subsection carries forward the substance of section 501(b) of the 1946 act, which provided for Presidential assignment of Foreign Service officers to act as Chargés d' Affaires or Ministers resident.

*Section 503—Assignments to agencies, international organizations, and other bodies*

Section 503 combines several provisions of the 1946 act in authorizing the Secretary to assign members of the Service for duty in non-Foreign Service positions within the Federal Government as well as with international organizations and other bodies. Such assignments provide members of the Service with opportunities for valuable training and work experience, and also offer other agencies and organizations, such as the Congress, opportunities to benefit from the expertise of members of the Service, as well as a better understanding of the Foreign Service itself.

Section 503(a)(1) follows section 571(a) of the 1946 act in authorizing the Secretary to assign a member of the Service to non-Foreign Service position in another agency or to any international body. Section 503(a)(1) explicitly states that the Secretary's assignment authority extends to assigning a member of the Service to a non-Foreign Service position in the Department.

Sections 503(a)(2) through (4) follow section 574 of the 1946 act in authorizing the assignment of a member of the Service to a position in the United States with a State or local government with a member or office of the Congress, or with a public or private nonprofit organiza-

tion, or for special instruction or training with public or private organizations. There is no longer a percentage limitation on assignments to the Congress, as there was in section 576 of the 1946 act.

Section 503(b)(1) preserves the rule established by section 571(c) of the 1946 act that a member of the Service assigned under this section shall receive the salary of his or her Foreign Service class, or, when assigned to a non-Foreign Service position, the salary of the position to which the member has been assigned if such salary is higher than that of the member. Section 571(c) distinguishes between assignments to Foreign Service and non-Foreign Service positions in this regard.

Section 503(b)(2), following section 571(d), provides that the salary of a member assigned under this section shall be paid out of the appropriations for salaries of members of the Service, which appropriations may be reimbursed, by the employing agency or organization.

Section 503(b)(3) provides that a member of the Service assigned under section 503(a)(4) shall be deemed to be an employee of the House or Senate for purposes of payment for travel and other reimbursable expenses. This new provision will permit the individual assigned to be compensated for travel on official business of the Congress.

Section 503(c) establishes a limitation of 4 years of continuous service on assignments to positions outside the Foreign Service, unless the Secretary approves an extension due to special circumstances. This limitation is not an addition to the 8-year limitation on assignments within the United States to any positions, either Foreign Service or non-Foreign Service, contained in section 504(a) of the bill.

*Section 504—Service in the United States and abroad*

Section 504(a) sets forth the fundamental criterion for membership in the Foreign Service—worldwide availability. It requires that all career members of the Service shall be obligated to serve abroad. The anomalous "domestic" Foreign Service personnel category will be abolished and those not available for worldwide service will be converted to the civil service under section 2104. No member of the Service may be assigned to duty within the United States for any period of continuous service exceeding 8 years unless the Secretary approves an extension for that individual in special circumstances. This limitation carries forward the policy of section 571(a) of the 1946 act. This subsection also requires the Secretary to establish the maximum periods for duty in the United States within the 8-year maximum established by law as, for example, a 3-year limit for most first tours of duty.

Section 504(b) states that members of the Service who are citizens of the United States will normally be assigned to duty within the United States at least once during each 15-year period in the Service. This provision carries forward the policy of section 572 of the 1946 act, which provides that every Foreign Service officer is to be assigned to duty in the United States for at least 3 years in his or her first 15 years of service. Section 504(b) broadens the scope of the provision to cover all members of the Service who are citizens of the United States, rather than just Foreign Service officers, and also allows discretion to make assignments consistent with the needs of the Service.

Section 504(c) authorizes the Secretary to grant a paid sabbatical to a career member of the Senior Foreign Service for a maximum of

11 months to permit the member to engage in study or uncompensated work experience that will contribute to the members development and effectiveness. Such sabbaticals may be granted under conditions specified by the Secretary in light of the conditions which apply to sabbaticals for members of the Senior Executive Service (SES) under 5 U.S.C. 3396(c). Those statutory conditions include the following requirements: (1) a member of the SES may receive no more than one sabbatical in any 10-year period and may not take a sabbatical if eligible for voluntary retirement; and (2) a sabbatical agreement must specify that if the member fails without good and sufficient reason to carry out the agreement, the member shall be liable to the United States for payment of all expenses, including salary, of the sabbatical.

*Section 505—Temporary details*

Section 505 defines a temporary detail as a period of duty not more than 6 months in duration, so that such details will not be subject to the requirements of an assignment within the meaning of this chapter. Thus, a 5-week detail to Washington for consultations with the Department would not be considered a new assignment to duty in the United States. This provides for administrative efficiency and greater ease of movement of individuals within the Service.

Chapter 6—Promotion and Retention

Chapter 6 retains the basic concepts of promotion and retention in the Foreign Service based upon demonstrated merit.

This chapter extends the selection board process (now applicable by statute only to Foreign Service officers) to all American personnel. Selection boards, which must include public members, women and members of minority groups, will rank the members of each class on a comparative basis for purposes of promotion, award of performance pay, retention in the senior ranks, and separation of members whose performance falls below the standard of their class.

Chapter 6 also specifically provides a rigorous threshold for entry into the Senior Foreign Service and authorizes the Secretary to prescribe the period during which members of the Service may be considered for entry into the SFS. Promotions into the SFS must be based upon long-term projections of personnel flows and needs designed to provide more predictable recruitment, advancement and career development.

This chapter continues the authority for retirement based on expiration of time in class and extends that authority to all members of the Service who receive salaries comparable to those of Foreign Service officers and who are in occupational categories designated by the Secretary. It eliminates the exemption of those in the top rank from the time-in-class limitations, while providing that those members whose maximum time in class expires after they have attained the highest class for their respective personnel categories may continue to serve under renewable limited extensions of their career appointments. The grant and any renewal of any such an extension would be on the basis of selection board recommendations.

Chapter 6 also keys retention to relative performance (as determined by selection boards) and extends that authority to include all American career personnel. The bill specifically provides for administrative review, including an opportunity for the member to be heard, before any separation is effected for failure by a member to meet the standards of performance for his or her class.

Chapter 6 continues the Secretary's authority to separate a member of the Service for cause, after a hearing. The bill provides that such a hearing will be conducted by the Foreign Service Grievance Board, which will assure appropriate due process protections. This hearing would be in lieu of any other administrative procedure.

*Section 601—Promotions*

Section 601(a) defines the term "promotion" for certain members of the Foreign Service. Career members of the Senior Foreign Service are promoted by Presidential appointment to a higher salary class, while noncareer and career candidate members of the Senior Foreign Service are promoted by the Secretary by assignment to a higher salary class. Foreign Service officers and Foreign Service personnel assigned to the Foreign Service schedule may be promoted by Presidential appointment into the Senior Foreign Service or by assignment by the Secretary to a higher salary class in the Foreign Service Schedule.

Section 601(b) extends to a greater number of members of the Foreign Service the procedure of promotion by selection board. Presently, only Foreign Service officers are required to be promoted based on the recommendations and ranking of selection boards, although by administrative practice selection boards are used for most other categories. The bill now requires members of the Senior Foreign Service and Foreign Service personnel to be promoted in this manner. An exception to the selection board process is authorized for categories of career and career candidate personnel under the Foreign Service schedule who may be designated by regulation to receive promotion based on satisfactory performance. This exception will permit the initial promotions of officer candidates and certain specialists who enter the Service in "career ladders" after completion of a specified period of satisfactory performance without the necessity of awaiting the scheduling of a selection board to review these comparatively routine promotions. The only other exception to promotions based on selection board recommendations is that authorized by section 606(a), which permits the Secretary to promote a member of the Service pursuant to the recommendation of the Foreign Service Grievance Board (as set forth in chapter 11 below), an equal employment opportunity appeals examiner, or the Special Counsel of the Merit Systems Protection Board, and requires the Secretary to promote a member pursuant to a decision or order of the Merit Systems Protection Board.

Section 601(c) establishes procedures for promotion into the Senior Foreign Service. Only career members of the Service assigned to class FS-1 of the Foreign Service schedule are eligible for promotion into the Senior Foreign Service. A candidate must request consideration for promotion into the Senior Foreign Service. Promotion decisions will be based upon recommendations and rankings by selection boards

within their respective agencies. The Secretary is authorized to prescribe the period during which members may be considered for entry into the Senior Foreign Service. For example, a Foreign Service officer who requests promotion into the Senior Foreign Service might be considered by up to five consecutive annual selection boards and, if passed over, would then no longer be eligible for promotion into the Senior Foreign Service. In order to avoid congestion in class 1 of the Foreign Service Schedule by less productive individuals no longer eligible for promotion, the Secretary may prescribe a separate time-in-class under section 607 (a) of the bill during which such a passed-over member could remain in the Service. In addition, if the candidate withdraws his or her request to be considered for promotion into the Senior Foreign Service, no further requests will be entertained.

Section 601 (c) (2) directs the Secretary, in making decisions on promotions into and retention within the Senior Service, to take into account the needs of the Service to plan for continuing admission of new members and for effective career development and reliable opportunities for promotion. The subsection calls for the establishment of long-term promotion ranges in the relevant competition groupings, together with the range of combined voluntary and involuntary attrition necessary to achieve overall balance in the flow pattern.

This subsection reinforces a fundamental tenet of the 1946 act that the Foreign Service must have sufficient attrition in the senior ranks to maintain its vitality. Subsequent provisions in this chapter provide the authority to assure that such attrition will occur based on comparative evaluations of performance.

The proposal for a Senior Foreign Service parallels the Senior Executive Service program established in the civil service by the Civil Service Reform Act, while taking into account the fundamental differences in conditions of service between the Foreign Service and the civil service. A basic premise behind these services is provision of incentives for senior executive-level managers in the form of performance pay and bonuses, but at the same time to have more stringent requirements for entry into and retention at this senior level. The thrust of the Senior Foreign Service is to motivate and reward a high level of performance and to insure that those at the top ranks are those who are currently performing at the optimum level. It is intended to be a "high-risk, high-gain" system. Like the rest of the Foreign Service personnel system, the Senior Foreign Service is to be operated under merit principles. The function of the selection boards will be to rank-order members of the SFS according to the level of their performance, and on that basis to make recommendations for promotion, retention, granting and renewal of limited extensions and entry into the Senior Foreign Service. The criteria will be comparative performance and possession of demonstrated skills necessary for performance in Senior Foreign Service. The phrase "needs of the service" is not intended to permit the agencies to eliminate career members for political reasons, for having engaged in responsible dissent, or because they hold personal views at variance with top management officials or political appointees. Individuals who have committed themselves to a difficult career, and in whom the government has invested an enormous amount of training and education should have reasonable

expectations that a high level of performance in the job will be rewarded by continued service. Otherwise, they will be unable to anticipate a career progression with any degree of certainty. They will feel at the mercy of factors beyond their control, and they will fear the consequences of any constructive dissent or independence of mind, no matter how valuable or justified. The impact on the morale and quality of the service would be devastating.

Without the offer of a reasonable degree of predicability and security in their careers, qualified individuals will not in the future make the lifetime commitment which a Foreign Service career requires. Long periods of service overseas prevent Foreign Service members and their families from developing the type of professional and personal contacts which facilitate a second career. Recent experience in the area of foreign relations has amply demonstrated the importance of having strong, courageous and intelligent men and women in the Foreign Service, and nothing in this legislation should be taken as a signal that these attributes will not be valued in the future.

The key to the success of the Senior Foreign Service will depend ultimately on the wisdom, integrity, and managerial fortitude with which it is established and operated. These attributes cannot be legislated. However, as a demonstration of the committee's serious commitment to the members of the Foreign Service, there is included in section 2402 of the bill a requirement for regular reporting to the Congress on implementation of the act, on such matters as the projected and actual rates of promotion, and the numbers of officers being terminated, retained, and advanced. Because we believe that the input from the members of the Service themselves is essential, included in the section is a requirement that the exclusive representatives of Foreign Service employees be given access to all information relevant to this oversight process, and that their comments be incorporated in reports made to the Congress.

Section 601(c)(3) provides that the affidavits required upon appointment by 5 U.S.C. 3332 (affirming that no consideration has been paid for appointment) and by 5 U.S.C. 3333(a) (affirming loyalty to the United States and that the employee will not participate in strikes against the Government) need not be repeated when a promotion by appointment into or within the Senior Foreign Service occurs without a break in service. This provision parallels section 621 of the 1946 act, which waived these requirements as to promotions of Foreign Service officers by appointment to a higher class. Under this bill, this provision remains relevant only to the Senior Foreign Service (cf. sections 302, 601).

#### *Section 602—Selection boards*

Section 602 continues the authority of the Secretary, presently contained in section 632(a) of the 1946 act, to establish selection boards to evaluate the performance of members of the Service. However, while the provision in the 1946 act applied only to Foreign Service officers, section 602 applies generally to members of the Senior Foreign Service and members who are paid under the Foreign Service schedule.

Selection boards will rank the members of a class on the basis of their relative performance and, as appropriate, will make recommenda-

tions concerning promotions, awards of performance pay to members of the Senior Foreign Service, denials of step increases under section 406(a), offers or renewals of limited extensions of career appointments under section 607(b) to members of the Service whose maximum time-in-class has expired, as well as such other actions as the Secretary may prescribe. The functions assigned to the selection boards by this section are not necessarily exclusive. The boards may be assigned additional functions, such as recommending retirement based on relative performance under section 608, or the award of additional step increases to particular individuals. The functions assigned to a board are to be carried out in accordance with precepts prescribed by the Secretary.

Section 602(b) requires all selection boards to include public members, i.e., individuals who are not Federal Government employees. The Secretary is directed to assure that a substantial number of women and minority group members are appointed to each selection board.

*Section 603—Basis for selection board review*

Selection boards evaluate individual members of the Service on the basis of their performance in relation to their peers and in light of the needs of the Service. Section 603 describes the manner in which selection boards will be informed about individuals (only through records included in the official personnel file) and about Service needs (through precepts prescribed by the Secretary). On the basis of this information, the selection process is intended to identify the individuals who are best qualified to perform the functions required by the Service.

Section 603(a) states that recommendations and rankings by selection boards shall be based upon relevant personnel records kept by the Department which describe the character, ability, conduct, language, competence, quality of work, industry, experience, dependability, usefulness, and general performance of members of the Service. The description of personnel records is drawn from section 611 of the 1946 act and is intended to describe service-related characteristics. Such records may include, but are not limited to, the reports of Foreign Service inspectors, performance evaluation reports of supervisors, and records of commendations, awards, reprimands, and other disciplinary actions.

For the Senior Foreign Service, the consideration of records of current and prospective assignments is expressly contemplated. The committee does not question the utility of such records in estimating promotion needs. However, in order to ensure that such determinations will not be arbitrary or capricious, the career development pattern for each individual must be carefully constructed from the beginning of his or her career and extending throughout the career. While specialization in a certain functional or geographic area is desirable, individuals must be careful not to over-specialize to such an extent that estimates of prospective assignments in the Senior Foreign Service reveal that the individual has nowhere to go in his or her field and no secondary skills upon which to draw. The establishment of an effective career development pattern depends equally on the individual member's constant efforts and on well-trained personnel counselors

who are capable of charting alternative patterns which are sensible and workable in terms of present U.S. foreign policy objectives and of future possibilities and trends.

Section 603(b) complements subsection (a) and prescribes those guidelines which selection board precepts must reflect. In accordance with merit principles, precepts shall emphasize performance which demonstrates those qualities necessary to the Service. More detailed guidelines, such as the need for responsiveness to challenges and acceptance of hardships, may be developed administratively as necessary. Accordingly, this subsection states the general intent that, for the Senior Foreign Service, the precepts should emphasize the needs of the Service for policy formulation capabilities, executive leadership qualities, and highly developed functional and area expertise. In this regard, the section carries forward the policy of section 626 of the 1946 act that specialization should not retard orderly advancement in the Service.

*Section 604—Confidentiality of records*

Section 604 directs that the personnel records described in section 603 shall be kept confidential, except to the extent that they pertain to the receipt, disbursement, and accounting of public funds. In addition to this general requirement of confidentiality, access to such records is limited to the President, the Secretary, the legislative and appropriations committees of Congress charged with considering legislation and appropriations for the Service and the representatives of such committees, and officers and employees of the Government authorized by law or assigned by the Secretary to work on such records. Individual members also have access to their own records upon written request. Section 604 is derived from section 612 of the 1946 act, which operates to exempt Foreign Service personnel records from public disclosure. This section conforms with requirements of the Privacy Act (5 U.S.C. 552a).

*Section 605—Implementation of selection board recommendations*

Section 605 follows section 623 of the 1946 act, which applied only to Foreign Service officers, and applies to provision to officers and personnel alike. Section 605 specifies that the recommendations for promotion made by selection boards shall be submitted to the Secretary in rank order by class or by specialization within a class. The Secretary will then make promotions or, in the case of Presidential appointment, submit recommendations to the President for promotions in strict accordance with rankings of the selection boards. The Secretary may, however, prescribe regulations specifying special circumstances in which an individual name may be removed from the rank order list or a promotion may be delayed. Currently, these circumstances as specified in regulation include issues of security, misconduct, suitability, or malfeasance, or cases where documentation on performance available to the selection board appears significantly inaccurate or incomplete.

*Section 606—Other bases for increasing pay*

Section 606 authorizes the Secretary to make (or recommend that the President make) a promotion, or grant an award of performance



pay, or within-class salary increase pursuant to a recommendation of the Foreign Service Grievance Board, and equal employment opportunity hearing examiner, or a decision of the Merit Systems Protection Board or recommendation of the Board's Special Counsel. The purpose of this authority is to permit the smooth implementation of the decisions and recommendations of these authorized administrative forums with respect to redress of grievances or complaints. Section 606(a) generally follows section 632(b) of the 1946 act (as amended in 1973). The references to the Merit Systems Protection Board and its Special Counsel are new. The Committee notes that the Secretary is directed rather than authorized, to comply with decisions of the Merit Systems Protection Board, since these decisions are mandatory. The remaining authority of the Secretary in this section is discretionary.

Section 606(b) authorizes the Secretary, under special circumstances set forth by regulation, to make retroactive promotions and pay awards, and to recommend retroactive promotions by the President. Section 606(b) also follows generally section 632(b) of the act. It applies to actions under subsection (a) of this section as well as to promotions delayed pursuant to section 605(b).

*Section 607—Retirement for expiration of time-in-class*

Section 607(a)(1) provides that the Secretary shall prescribe regulations specifying the maximum period in which members of the Senior Foreign Service, Foreign Service officers and certain other career members of the Service may remain in a salary class or in a combination of classes without promotion. The Secretary may change such time-in-class limitations as the needs of the Service may require. In a new provision, career Foreign Service personnel assigned to salary classes to which Foreign Service officers may also be assigned may also be subject to time-in-class limitations when designated by the Secretary. Time-in-class regulations may distinguish among occupational categories, such as secretaries and communicators, or among classes, but all individuals in a given occupation and within the same class, competing for the same assignments and promotions, will be covered in the same fashion.

Section 607(a)(2) provides that the maximum time-in-class limitations may apply to a single salary class or to a combination of salary classes. For example, regulations could prohibit a Foreign Service officer from remaining in classes FS-2 and FS-1 for a combined total of more than 15 years. Such combination time-in-class limitations have been prescribed administratively under the 1946 act and are here expressly authorized. Time-in-class limitations may not be less than 3 years in each class for career members of the Senior Foreign Service in order to insure that time-in-class is not used capriciously as an attrition mechanism in the Senior Foreign Service.

Section 607(a)(3) provides for administrative change in time-in-class periods, but requires that individuals already in a class for which time-in-class is decreased be permitted to remain in class for the period formerly set or at least for a period long enough to afford a reasonable opportunity for promotion.

Section 607(b) continues the authority for retirement based on excessive time-in-class for Foreign Service officers which is currently

provided in section 633 of the 1946 act. It expands this authority to cover career personnel of the most senior rank (e.g., career Ministers) who were not subject to time-in-class limitations under the 1946 act. It also authorizes coverage of other relatively senior personnel to the extent that the Secretary determines advisable. It is contemplated that time in-class limitations will be shorter than the present limitations at the senior levels. For example, the time-in-class for each class of the Senior Foreign Service will not exceed the 5-year maximum specified for limited extensions of career appointments under section 607(b).

Section 607(b) also provides that members of the Service whose maximum time-in-class expires after they have attained the highest class for their respective occupational categories or in the Senior Foreign Service may continue to serve under renewable limited extensions of their career appointments, on the basis of selection board review (cf. section 602(a)). These extensions are subject to renewal but may not exceed 5 years. Personnel serving under such limited career extensions would continue to be career members of the Service for purposes of performance pay awards, retirement based on relative performance and participation in the Foreign Service retirement and disability system, among other things.

Section 607(b) is a new provision. It is designed to maximize flexibility and efficiency in the management and utilization of the senior personnel of the Service. It makes retention in the senior ranks dependent on performance and the needs of the Service. Only those who demonstrate a strong ability and desire to perform and for whom onward assignments are available will be given limited career extensions or will have them renewed.

Section 607(c) provides that anyone who does not receive a promotion within an applicable time-in-class limitation prescribed pursuant to section 607(b) is terminated or not renewed shall be retired from the Service and shall receive retirement benefits in accordance with section 609. This subsection recognizes that such individuals will have contributed a significant portion of their careers to Government service and therefore deserve retirement benefits even if they are forced to retire earlier than anticipated. In practice, most individuals will meet the eligibility requirements for voluntary retirement in any case, but the Committee feels that this attrition mechanism, to be just, must carry with it this provision insuring eligibility for retirement benefits.

*Section 608—Retirement based on relative performance*

Section 608 continues the authority of section 633(a)(2) of the 1946 act to retire a Foreign Service officer for failing to meet requisite standards of performance. Section 608 extends this authority to cover all career members of the Service who are U.S. citizens. However, section 2106(e) of this bill exempts temporarily a member currently in the Service to whom section 633(a)(2) of the 1946 act does not now apply. This exemption extends for 10 years or until the member becomes eligible for voluntary retirement and an immediate annuity, whichever occurs first. This exemption is necessary in fairness to those who began their careers in the Foreign Service under a different set of rules which did not subject them to evaluations for "selection-out" by selection boards.

Section 608(a) specifically provides that the Secretary will prescribe regulations concerning the standards of performance to be met by career members of the Service. Where selection board review indicates that the member has not met the standards of the performance for his or her class, there will be an administrative review of the member's performance, which shall include an opportunity for the member to be heard. This section is intended to codify the requirement for administrative procedures which have been developed and employed in the Foreign Service to implement the decision in *Lindsay v. Kissinger*, 367 F. Supp. 949 (D.D.C. 1973). This provision is not intended to require additional or expanded hearing procedures for administrative review of a member's performance.

Section 608(b) provides that if the administrative review confirms that a member of the Service has failed to meet the standards of performance of his or her class, the member will be retired from the Service and will receive benefits under section 609.

• *Section 609—Retirement benefits*

Section 609(a) delineates the benefits available to a member of the Service who is retired pursuant to sections 607 or 608. Under section 609(a) those members retired following limited career extensions under section 607(c) (2) or who are retired from the Senior Foreign Service or from class FS-1 of the Foreign Service schedule will receive immediate annuity benefits computed in accordance with section 806, as will other members of the Service retired after becoming eligible for voluntary retirement under section 811. In providing immediate annuity benefits for such senior personnel, section 609 parallels section 634(a) of the 1946 act, which accorded such benefits to Foreign Service officers of classes 1, 2, or 3 separated from the Service under time-in-class limitations or for failing to meet requisite standards of performance.

Section 609(b) provides severance pay to any member of the Service retired under section 607(c) or 608(b) who is not eligible for annuity benefits under section 609(a). The retiree is paid 1 month's salary for each year of service, up to 1 year's salary at the member's current rate. The retiree may also receive a refund of contributions to the Foreign Service retirement and disability fund. A retiree with at least 5 years of service may elect, in lieu of receiving a refund of his or her contributions, a deferred annuity commencing at age 60. Section 609(b) closely parallels section 643(b) of the 1946 act.

• *Section 610—Separation for cause*

Section 610(a) (1) continues the Secretary's authority, presently contained in section 637 of the 1946 act, to separate any member of the Service for cause.

• Section 610(a) (2) provides that members serving under career appointments in the Senior Foreign Service or under the Foreign Service schedule are entitled to a hearing before the Foreign Service Grievance Board prior to separation at which the cause for separation must be established. Those serving under limited or temporary appointment, including career candidates, are also entitled to such a hearing if separation is based on misconduct. These hearing rights are the exclusive administrative procedure for challenging separation for cause.

Section 610(a) differs from the 1946 act in two respects. It provides that the hearing rights constitute the exclusive administrative procedure, which avoids the potential of duplicate hearings for those few members who may also have access to the Merit Systems Protection Board. Second, the provision specifies that the Foreign Service Grievance Board will conduct hearings under this section. That Board, which did not exist when the 1946 act was enacted, is the best qualified body to adjudicate these cases. The Board of the Foreign Service has heretofore performed this function in an advisory capacity to the Secretary of State.

Section 610(b) provides that members of the Service who are separated for cause and who are participants in the Foreign Service retirement and disability fund will receive refunds of their contributions to that fund. A member with 5 years of retirement credit may choose instead a deferred annuity, unless separation has been for reason of disloyalty to the United States. Section 610 is virtually identical to section 637(b) of the 1946 act. Section 637(c) of the 1946 act has not been carried forward because the provision is unnecessary. The old section merely stated that those individuals who are not participants in the Foreign Service retirement and disability fund (that is, those on limited appointments) shall receive only those benefits to which they are entitled under the retirement system in which they are participants.

*Section 611—Termination of limited appointments*

Section 611 provides that the Secretary may at any time terminate the limited appointment of any member of the Service who is paid a salary specified for the Senior Foreign Service or under the Foreign Service schedule. Among those serving under limited appointments are career candidates (cf. section 306(a)) and noncareer appointees. Family members of Government personnel serving under local compensation plans (cf. section 311) are also covered by this section. Section 611 effectively combines authorities contained in section 635 of the 1946 act, permitting termination of probationary Foreign Service officers, and section 638, permitting termination of the limited appointments of Foreign Service Reserve officers and Foreign Service Staff personnel. This section does not apply to expiration of a limited or temporary appointment at the end of its specified term.

*Section 612—Termination of appointments of consular agents and foreign national employees*

Section 612 authorizes the Secretary of State to terminate at any time the services of any consular agent, after giving due consideration to the criteria and procedures normally followed in the locality in similar circumstances. Similar authority is placed with the individual agency heads with respect to foreign national employees. The principal purpose of this section is to insure that provisions of Federal law applicable to domestic employment do not limit the authority to effect separations of foreign nationals employed abroad. Section 612 combines and broadens the authorities provided by three sections of the 1946 act: Section 671, providing authority to terminate appointments of consular agents for unsatisfactory performance, misconduct, or malfeasance; section 663, authorizing separation of alien clerks and

employees for misconduct or malfeasance; and section 662, authorizing separation of alien clerks and employees for unsatisfactory performance.

*Section 613—Foreign Service Awards*

Section 613 directs the President to establish a Foreign Service awards system. The Committee, in adopting a recommendation of Senator Javits, believes that an effective way to encourage high performance and to give suitable recognition to exceptional achievement is to have a well-publicized system of awards given by the President and the Secretary of State in public ceremonies comparable to those held for military officers. The Committee notes that the Department has established a system of Departmental awards and encourages the continued and vigorous use of this program. In adopting this amendment the Committee wishes to supplement such existing awards through the establishment of Presidential awards in recognition of outstanding substantive contributions to the foreign policy and diplomacy of the United States, including, but not limited to, acts of physical bravery.

*Chapter 7—Foreign Service Institute Career Development, Training, and Orientation*

Chapter 7 continues the authority of the Secretary to maintain the Foreign Service Institute and to provide training and counseling. This chapter makes only minimal changes from existing law. Primarily, it vests authority for the operation of the Institute in the Secretary, consolidates in a single chapter various existing authorities for training, career development and counseling, and makes explicit reference to training for family members of Foreign Service personnel.

*Section 701—Foreign Service Institute*

Section 701(a) continues the present exclusive authority of the Secretary of State to operate and maintain the Foreign Service Institute, originally established by section 701 of the 1946 act, and restates the Secretary's authority to provide training and instruction to personnel of the Service, the foreign affairs agencies and other agencies. The Institute will continue to be headed by a Director appointed by the Secretary of State.

Section 701(b) directs the Secretary of State to provide training, to the extent practicable, which meets the needs of all agencies. It also directs other agencies not to duplicate the facilities and training provided by the Secretary of State through the Foreign Service Institute or otherwise. The section is patterned after section 701 of the 1946 act.

*Section 702—Foreign language requirements*

Section 702 provides that the Secretary shall establish foreign language proficiency requirements for personnel of the Service who will be assigned abroad and shall arrange for appropriate language training at the Institute or elsewhere. This section follows in part section 578 of the 1946 act. Its purpose is to carry out the objective stated in section 101(a)(4) of this bill that members of the Foreign Service be knowledgeable of the languages spoken in the countries where they are assigned. The Committee notes the recent GAO report entitled, "More

Competence in Foreign Language Needed by Federal Personnel Working Overseas," and encourages the Secretary of State to improve language training programs to the maximum extent feasible within existing budgetary restraints.

*Section 703—Training authorities*

Section 703 sets forth certain authorities which the Secretary of State alone may exercise, and other authorities which the individual heads of agencies may exercise, in connection with the functions of the Institute. Section 703(a) (1) and (2) provide for the establishment of the curriculum of the Institute and for its correlation with useful training and instruction given by other Government institutions and at private institutions. These provisions are derived from section 702 of the 1946 act.

Section 703(a) (3) authorizes the Secretary of State to encourage programs complementary to those of the Institute and permits grants and other gratuitous assistance for this purpose to nonprofit institutions. Section 703(a) (3) is derived from sections 702 and 703 of the 1946 act and recognizes the desirability of using the facilities of nonprofit institutions in cases where it would be costly or inefficient to set up similar programs at the Institute. This provision is intended to encourage a variety of activities to foster broadened experiences for members of the Service, including activities that will involve leave without pay, and which will contribute to career development.

Section 703(a) (4), derived from section 704 of the 1946 act, authorizes the employment of personnel for the Institute, including, where necessary, employment of language and other specialists without regard to civil service laws governing appointments in the competitive service. It also permits the employment of noncitizens where U.S. citizens are not available. This section recognizes the need for certain kinds of language and foreign affairs specialists who may be few in number or where U.S. citizens may not be available.

Section 705(a) (5) is derived from section 707 of the 1946 act. It authorizes the acquisition of real and personal property without public advertisement in order to carry out the provisions of chapter 7.

Section 703(b), a new section offered as an amendment by Senator Pell, requires the Secretary to establish professional development programs for all members of the Foreign Service, and specifies in general terms the kinds of training and assignments expected for various categories. Section 703(b) (2) states that for Foreign Service officers, junior officer and mid-career training is required, with the former directed toward providing basic professional skills, and the latter emphasizing management, negotiation, and policy development skills. For other members of the Service, training is intended to maintain and improve professional expertise and to develop appropriate management skills. Section 703(b) (4) requires that in each case, training should be job-related, and designed to meet requirements which are based on clearly established standards of expected performance. Section 703(b) (5) provides that the Secretary should establish a system to provide credit for advanced university degrees for those who complete courses comparable to graduate level university courses. In establishing this program, the Secretary is required to consult with leading graduate schools and nationally recognized accrediting asso-

ciations to insure that they are comparable in quality to those of academic graduate schools which offer programs in the social sciences. Section 703(b) (6) states that career development training under this section may be provided by the Department, by other government entities, and by nongovernmental institutions, as appropriate. Section 704(b) (7) requires an annual report by the Secretary to Congress on the status of the professional development program and the resources needed and made available for the program. It also requires that the first report provide information on resources needed to begin the program. Such an initial report should in particular address the question of the additional positions and increase in employment ceiling required to make the program an integral part of Foreign Service careers.

Section 705(c) (1) is substantially identical to section 705 of the 1946 act and authorizes the Secretary to pay the tuition and other expenses of members of the Service and employees. Section 703(b) (2) authorizes the Secretary to pay the salary, excluding premium pay and special differentials, of members of the Service assigned for training. Section 703(c) (3), derived from section 704(f) of the 1946 act, authorizes the Secretary to provide special monetary or other incentives to encourage members of the Service to acquire or retain proficiency in foreign languages or special abilities needed in the Service. This section may provide incentives, for example, for members of the Service to acquire the language competence required for service at a hardship post where it is difficult to attract and retain personnel.

Section 703(d) directs the Secretary to design training programs which will encourage career development for all categories of members of the Service. This provision is new, and provides statutory support for the current administrative practice of organizing career-oriented training courses and seminars. The Committee expects particularly that the Secretary of State will design training programs to foster the career development of Foreign Service personnel, who include secretaries and communicators, as well as for Foreign Service officers. The Committee is concerned, for example, that necessary language proficiency is not always characteristic of support personnel serving overseas. The goal of the Foreign Service Institute should be to provide necessary training and to upgrade the skills of the various personnel categories of the Service so that each post has the best possible expertise available to serve U.S. foreign policy interests. To the extent that this requires increased resources for the Institute, the Committee will seek the necessary budget authority.

Section 703(e) provides that members of the families of personnel who are or will be assigned abroad may receive language and orientation training at the Institute, as well as functional training for anticipated employment at post pursuant to section 311. It is expected that functional training will only be available for actual assignments.

#### *Section 704—Training grants*

Section 704 carries forward in slightly revised fashion the provisions of section 708 of the 1946 act, as amended in 1978.

Section 704(a) provides for grants to members of families of Government employees attending approved programs of study, which are defined in section 703(d) (1) and (2) as language and orientation

training in anticipation of assignment abroad, or functional training for anticipated prospective employment as provided in section 311. Training and accompanying grants are not authorized for general purpose education. These grants, which are limited to expenses actually incurred up to a ceiling to be established by regulation, may be paid in advance or by reimbursement.

Section 704(b) continues the present authority for reimbursement of a Foreign Service family member for cost of language training at a public or private institution related to an assignment abroad, if the family member is unable to participate in language training provided by the Department.

*Section 705—Career counseling*

Section 705(a) carries forward the authority of section 639 of the 1946 act authorizing the Secretary to provide career counseling, advice, and placement assistance to members and former members of the Service, other than those separated for cause. The reference to former members is intended merely to avoid the necessity to keep a member on the rolls until counseling is completed and is not intended to provide a new service to those already separated from the Service. This will, for example, permit a member to retire from the Service, and still finish a counseling program begun before retirement. This subsection is intended to facilitate the transition of individuals from the Service and is derived from section 450 of the Foreign Relations Authorization Act, Fiscal Year 1979. Recognizing the unique character of the Foreign Service and its requirement that members spend most of their careers abroad, out of direct contact with domestic U.S. society, the Committee believes that such a formal career counseling program helps to ease the transition of members of the Foreign Service to another career. The possibility of retirement at an early age also enhances the need for such a program. The Committee notes that other agencies of the Federal Government have expressed interest in this program, which has been quite successful during its first year of operation.

Section 705(b)(1) provides that the Secretary may facilitate the employment of Foreign Service spouses by providing career counseling, maintaining a central system for cataloging their skills and employment opportunities available in the United States and abroad, and otherwise assisting them in obtaining employment. This section is derived from section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978, Public Law 95-105, 91 Stat. 856.

Section 705(b)(2) directs the Secretary to establish a Family Liaison Office to carry out these functions and others assigned by the Secretary. This provision is new, but the Department of State has an operating Family Liaison Office, set up pursuant to regulation and at the urging of this Committee. The Family Liaison Office in Washington and its Family Liaison Offices at posts abroad currently provide a wide variety of services to Foreign Service members, spouses, and families.

Chapter 8—Foreign Service Retirement and Disability System

Chapter 8 continues the Foreign Service Retirement and Disability System as it exists under Title VIII of the 1946 act, and incorporates voluntary and mandatory retirement features now in Title VI of that



act. Changes have been made primarily in style and terminology, and to maintain existing conformity of the Foreign Service Retirement and Disability System. Recent statutory changes to the latter system have been incorporated into the bill in accordance with existing law authorizing such conforming changes. New provisions have been added to protect the interests of former spouses.

*Section 801—Administration of the system*

Section 801 derives from section 801 of the 1946 act. It provides that the Foreign Service Retirement and Disability System will be administered by the Secretary of State, subject to regulations prescribed by the President.

*Section 802—Maintenance of the fund*

Section 802 derives from section 802 of the 1946 act. It provides that the Foreign Service Retirement and Disability Fund will be maintained by the Secretary of Treasury.

*Section 803—Participants*

Section 803 (a) names as participants in the Foreign Service Retirement and Disability System those career and career candidates personnel who are in the Senior Foreign Service or the Foreign Service Schedule, together with chiefs of mission who accumulate 20 years of service in that capacity. This provision will not alter the present categories of participants, except that it adds career candidates to assure that these personnel will be covered by the System's death and disability provisions during their initial years of probationary service until they achieve career status, (cf. section 803 of the 1946 act, sections 9 and 15 of Public Law 90-494, 82 Stat. 810, and section 625 (k) (1) of the Foreign Assistance Act of 1961, (22 U.S.C. 2385 (k) (1))). Career candidates are now covered by the Civil Service Retirement System. This change places them under Foreign Service retirement from the date of their initial appointment as career candidates. It eliminates the administrative cost of converting to the Foreign Service Retirement System those individuals granted career status. Career conditional appointees in the civil service are similarly covered by the Civil Service Retirement and Disability System.

Section 803 (b) provides that any otherwise eligible person who is appointed to a position by the President shall not, by virtue of accepting such appointment, cease to be eligible to participate in the System. This is consistent with provisions in chapters 3 and 5 preserving the salary and benefits of members of the Service who accept Presidential appointments.

*Section 804—Definitions*

Section 804 defines certain key terms for purposes of chapter 8 in accordance with section 804 of the 1946 act. New definitions added in connection with the annuity rights of former spouses provided in section 814 include "court" (section 804(3)) and "court order" (section 804(4)), "former spouse" (section 804(6)), and "pro rata share" (section 804(10)). The definition of "lump-sum credit" is derived from section 841(a) of the 1946 act, and the definition of "price index" found in section 804(9) of the 1946 act is omitted as obsolete. The definitions are arranged in alphabetical order.

*Section 805—Contributions to the fund*

Section 805 is substantially the same as section 811 of the 1946 act. It provides that 7 percent of a participant's salary shall be deducted and contributed to the fund and an equal amount shall be contributed from appropriations. It also provides that the contributions of a participant who transfers directly from another Government retirement fund will be transferred to the fund. Provision is made for special contributions to the fund to cover periods of creditable service for which no contributions had previously been made, except that such contributions are not required for periods of military service or for periods for which credit is allowed to persons of Japanese ancestry who were interned during World War II.

*Section 806—Computation of annuities*

Section 806, like its predecessor in the 1946 act, provides for computation of annuities to be paid to retired or otherwise separated members of the Service or their beneficiaries.

Section 806(a) provides that the basic annuity shall equal 2 percent of the member's average basic salary for the 3 consecutive years of service when that salary was highest, multiplied by the number of years of service credit (up to a maximum of 35 years). This section contains one exception which applies to participants who serve an assignment under section 302(b) in a position to which he or she was appointed by the President. If that participant's continuity of service is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary of State to be of comparable importance, the annuity calculation will be made on the basis of the highest 3 years of service, regardless of whether or not they are consecutive.

Section 806(b)(1)(A) provides for a survivor annuity for the participant's spouse of former spouse unless the participant elects otherwise in writing at the time of retirement. This election is irrevocable, the Committee expects that employees will be informed of this fact in a timely manner so that an election is made with a full understanding of its implications by both parties.

Section 806(b)(1)(B) is new; it requires the concurrence of a spouse before the participant may waive or reduce the survivor's annuity. This provision recognizes the interest in a survivor annuity of a spouse who has shared the Foreign Service life of the participant, and has thereby incurred a diminution in independent ability to provide for his or her own livelihood and income.

Section 806(b)(1)(C) provides for the concurrence of a former spouse in the waiver of a survivor annuity under section 814(b). Such election must be made within 12 months after the divorce becomes final or at the time of retirement, whichever occurs first.

Section 806(b)(2) provides the formula for a reduction in the participant's annuity when a survivor annuity is to be provided.

Section 806(b)(3) provides rules for computation of the survivor annuity, and for the date on which payment shall begin and end.

Section 806(c) provides for a survivor annuity to the children of a deceased participant.

Section 806(d) provides for recomputation of the children's annuity upon the death of the surviving spouse or one of the children.

Section 806(e) provides rules for the beginning and termination of the annuity paid to the children of a deceased participant.

Section 806(f) permits an unmarried participant to elect to provide a survivor annuity to a beneficiary designated by the participant. It also provides rules for computing the basic annuity and survivor annuity when such election is made.

Section 806(g) permits a participant who marries after retirement to elect a survivor annuity for his or her spouse and prescribes how the election is to be made.

Section 806(h) requires that, as a condition of receiving a survivor annuity, a surviving spouse or former spouse must elect to receive the survivor annuity instead of any other survivor to which he or she may be entitled under a Government employee retirement system. For purposes of this section, neither the social security system nor the military retirement system are considered a retirement system for Government employees.

Section 806(i) (1) provides that any married annuitant entitled to a supplemental annuity by reason of additional service through re-appointment or recall after an initial period of retirement shall have that supplemental annuity reduced to provide a supplemental survivor annuity for his or her spouse unless the annuitant elects otherwise in writing, subject to the condition regarding the spouse's consent as described in section 806(b) (1), above.

Section 806(i) (2) directs the Secretary of State to issue regulations implementing section 806(i) (1) and section 823 in cases in which an annuitant has a former spouse who was married to the participant during the period of recall service or who qualifies for an annuity under section 814 (a) or (b).

Section 806(j) provides for recomputation of the basic annuity of a married annuitant who, subsequent to retirement, becomes single through death or divorce. The subsection also allows such an annuitant to elect a survivor benefit in the case of remarriage.

Section 806(k) provides for annual notice to annuitants of their rights under subsections (g) and (j) and, to the extent practicable, for notice to spouses and former spouses of participants of their annuity right under sections 806 and 814.

Section 806(l) provides that the basic annuity and the survivor annuity to a spouse shall not be less than the smallest primary insurance amount payable under title II of the Social Security Act. It establishes a similar minimum for the survivor annuity paid to a deceased participant's child. However, this subsection will not apply to an annuitant or survivor entitled to receive certain other periodic payments from the Federal Government that exceed the smallest primary insurance amount payable under title II of the Social Security Act.

*Section 807—Payment of annuity*

Section 807 states rules for the commencement of payment of an annuity, for submission of proof of eligibility or survivor benefits, or waiver of all or part of an annuity, and for recovery of over-payments. It is substantially identical to section 822 of the 1946 act.

*Section 808—Retirement for disability or incapacity*

Section 808 prescribes rules for disability retirement of participants in the system. Section 808 is substantially identical to section

831 of the 1946 act, with the addition of a conforming change (now effective by Executive order) concerning a time limit on submission of claims for disability retirement. Annuities paid under this section to members of the Foreign Service prior to the effective date of the Tax Reform Act of 1976 will continue to be excluded from income for Federal tax purposes.

Section 808(a) provides for disability retirement of a participant with 5 or more years of service who has become totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury. This subsection also provides that the annuity of a disability retiree with less than 20 years of service will be computed as if the retiree had 20 years' service, except that the additional service credit that may accrue to a participant may not exceed the difference between his or her age at the time of retirement and age 60.

Section 808(b) provides for physical examinations to determine disability or its persistence. It also provides for reinstatement of recovered disability retirees.

Section 808(c) provides that a recovered disability retiree who is not reinstated may elect voluntary retirement, if eligible, a lump-sum payment under section 815, or a deferred annuity beginning at age 60.

Section 808(d) states that a participant may not receive both benefits under this section and benefits under 5 U.S.C. 8101-8151 other than scheduled compensation provided under 5 U.S.C. 8107.

Section 808(e) permits a disability retiree to receive lump-sum compensation under 5 U.S.C. 8135 so long as it does not cover the same period as the annuity benefits for the same disability. In such a case, provision is made for refund of a portion of the lump-sum to the Department of Labor.

Section 808(f) permits application for a disability annuity up to 1 year after the date of separation from the Service, for a disability arising in the Service. Under present practice, if the participant retires or otherwise separates from the Service before the discovery or diagnosis of a disabling condition, a disability annuity may not be authorized. Section 808(f) is modeled after an identical provision permitting application for disability annuities under the Civil Service Retirement System contained in 5 U.S.C. 8337(b).

#### *Section 809—Death in the service*

Section 809 lists the benefits payable when a participant dies in service. Section 809(a) states the residual rule that if no annuity benefits are payable under the act, then the lump-sum credit consisting of contributions to the fund and interest thereon shall be paid. Section 809(b) provides survivor annuity benefits for the spouse or former spouse of a participant who dies in service with at least 18 months of civilian service credit toward retirement under the System. Section 809(c) and (d) similarly provide annuity benefits to children of such a deceased participant. Section 809(e) provides computation rules for such annuities, stating that if the participant had less than 20 years of service, the annuities shall be calculated as if the participant had served 20 years subject to the same exception set forth in section 808(a). Section 809(f) provides for a supplemental survivor

annuity to the spouse or former spouse of a participant who dies in service after being recalled from retirement pursuant to section 308. Section 809(g) provides that the annuity of a surviving spouse under this section will be reduced by the amount of any survivor annuity payable to a former spouse of the deceased qualifying for an annuity under section 814(b). Section 809(h) states the rules for commencement, termination, and resumption of such annuities.

*Section 810—Discontinued service retirement*

Section 810 provides that a participant who voluntarily separates from the Service with 5 or more years of service credit toward retirement under the system may choose between a lump-sum refund of contributions to the fund and an annuity commencing at age 60, computed in accordance with section 806.

*Section 811—Voluntary retirement*

Section 811 is similar to section 636 of the 1946 act. It provides that any participant who is at least 50 years of age and has rendered 20 or more years of creditable service, including at least 5 years of civilian service credit toward retirement under the System, may retire with the consent of the Secretary and receive an annuity computed in accordance with section 806.

The provisions of this section and of section 810 contain the requirement of a minimum of 5 years of service credit, excluding military and naval service, to insure that individuals with long military service who are subsequently appointed to the Foreign Service obtain at least 5 years of civilian service credit, which could include unhealthful post credit under section 817, prior to becoming eligible for voluntary retirement. The provision also insures that persons appointed late in life have sufficient service upon which to compute their "high-3" average salary. Those separating with less than 5 years of service credit would receive a refund of their retirement contributions as prescribed in section 815. This change is consistent with the existing 5-year service requirement for disability retirement and for separation with title to a deferred annuity.

*Section 812—Mandatory retirement*

Section 812 replaces sections 631 and 632 of the 1946 act. Section 631 referred to career ambassadors, who will no longer constitute a separate salary class (cf. section 302(a)(2)(C) of this bill). Section 812(a) provides that the mandatory retirement age for participants in the system shall be age 60, subject to certain exceptions. These exceptions, stated in section 812(b), were also included in both sections 631 and 632 of the 1946 act. First, any participant who reaches age 60 while occupying a position to which he or she was appointed by the President by and with the advice and consent of the Senate may continue to serve until that appointment is terminated. It should be noted that this exception applies only to appointments to positions (e.g., chief of mission, Assistant Secretary) and not to appointments to the Senior Foreign Service or as Foreign Service officers. Second, the Secretary may retain on active service for a period of up to 5 years a participant who has reached age 60 if the Secretary determines that it is in the public interest to do so.

*Section 813—Retirement of former Presidential appointees*

Section 813 provides that if a member of the Service is not reassigned within 3 months after completing an assignment in a position to which he or she was appointed by the President, the member shall be retired from the Service and receive annuity benefits in accordance with section 806. Section 813 is derived from section 519 of the 1946 act. The scope of section 813 is somewhat broader in that, unlike section 519 of the 1946 act, it extends to Presidential appointees under section 302(b) who are not necessarily chiefs of mission. The committee expects that, in the future, the attrition mechanism provided by this section will be used more consistently than it has been in the past.

*Section 814—Former spouses*

Section 814 is similar to an amendment proposed by Senator Hatfield. The following is Senator Hatfield's letter of June 23, 1980 to the Chairman.

UNITED STATES SENATE,  
COMMITTEE ON ENERGY AND NATURAL RESOURCES,  
Washington, D.C., June 23, 1980.

Hon. CLAIBORNE PELL,  
Chairman, Senate Subcommittee on Arms Control, Oceans International Operations and Environment, S-116 Capitol Building,  
Washington, D.C.

DEAR CLAI: As you may know, last week I introduced on the floor an amendment (No. 1897) to the Foreign Service Act which addresses the present retirement inequities faced by former wives of Foreign Service Officers. This proposed amendment, embodied in Chapter VIII of S. 1450, was referred to the Senate Foreign Relations Committee last week.

Despite the fact that the Foreign Service homemaker is a vital resource, enriching the overseas communities with thousands of hours of donated service, she is denied by Federal law a share of her former husband's pension or survivor benefits. I believe it is important that we remedy this injustice which so severely effects former volunteers in America's service abroad.

It is my understanding that your subcommittee will consider the Foreign Service Act in markup shortly. I would request your assistance in offering this amendment before your subcommittee, so that it can become a part of the Foreign Service legislation. My proposed amendment is a counterpart to Congresswoman Schroeder's H.R. 2857, which was included in the original proposal of the Foreign Service Act of 1979, as prepared by the House Subcommittee of the Post Office and Civil Service Committee.

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Sincerely,

MARK O. HATFIELD.

Section 814 is a new section which provides for annuity benefits to former spouses of members of the Foreign Service who participate in the Foreign Service Retirement and Disability System provided the marriage covered at least 10 years of creditable service. The Committee believes that this provision is sorely needed to begin to balance

some of the inequities inherent in the Foreign Service life and which have fallen disproportionately on spouses of Foreign Service employees.

The nature of a Foreign Service career makes it particularly difficult for spouses of members of the Foreign Service to attain any independent economic security. Not only do the frequent transfers among Foreign Service posts around the world militate against the establishment of an independent career for a spouse, but the opportunity for paid employment of any kind in most foreign countries for a spouse is minimal due to legal, language, and cultural barriers. Foreign Service spouses, therefore, have little opportunity either to establish pensions in their own right or to develop marketable skills which can be put to use when the need arises. At the same time, they often contribute countless unpaid hours to the Service. Under current law, in the event of divorce, a former spouse of a Foreign Service member is denied retirement or survivorship rights under the Foreign Service Retirement System. In contrast, under social security today, a nonworking spouse can acquire a pension based on the work of his or her spouse. However, payments of sums otherwise due to an annuitant or participant may be made to another person pursuant to the terms of any court decree of divorce, annulment, or legal separation or to the terms of any court order or court-approved property settlement incident to divorce, annulment, or separation.

This policy has resulted in an apparent "Catch-22" for spouses of Foreign Service members. Until 1972, the annual efficiency rating of Foreign Service officers included a rating of the performance of their wives, though not to husbands, in such activities as entertaining, relationship with the community, and involvement in the Service projects of the U.S. wives. Despite the repeal of this practice the Foreign Service tradition of husband-wife "teams" and of the participation of wives in the vital representational activities of the post is still very much alive. Nonetheless, these full-time activities are not compensated in any way, so a spouse is left with no retirement credit and no marketable skills.

Equally unsatisfactory is the decision to leave this problem to a solution by court order. Access to the courts is expensive, particularly for individuals such as Foreign Service spouses who typically have no jobs, no insurance, and no other income to speak of. There is no real precedent for awarding to former spouses a percentage of pensions or survivor annuities. In addition, widely varying divorce laws from state to state would result in different awards of a Federal benefit for the same deprivations. Furthermore, there is little or no awareness among the legal community of the special problems faced by Foreign Service spouses. Finally, overseas service frequently results in cutting off these individuals from their community roots, thereby exacerbating the problems normally faced by women seeking divorce. In particular, this results in reliance on a husband's lawyer or on his recommendation. Section 814, therefore, seeks to provide some protection for these individuals through the mechanism of the retirement system.

Section 814(a) deals with the situation where the member of the Foreign Service has retired but is still living. Section 814(b) deals with the situation where the member dies, leaving a former spouse.

Section 814(a)(1) provides that, unless specified otherwise by a court order which is given effect pursuant to section 820(b)(1), a former spouse is entitled to 50 percent of that portion of the annuity of the participant attributable to creditable service of the participant performed while the former spouse was married to the participant.

Section 814(a)(2) provides that a former spouse who remarries before the commencement of the participant's annuity and before the former spouse reaches age 60 loses entitlement to an annuity under section 814(a)(1).

Section 814(a)(3) provides that the former spouse's annuity commences on the same date as the participant becomes entitled to an annuity or on the date the divorce or annulment becomes final, whichever is later. Section 814(a)(3) provides for termination of the former spouse's annuity upon the former spouse's remarriage before age 60 or death, or upon the termination of the participant's annuity, except that the former unremarried spouse's annuity will continue if the participant is recalled to service under section 308 and amounts corresponding to the former spouse's annuity will be deducted from the participant's salary and deposited in the fund pursuant to section 814(a)(5)(B).

Section 814(a)(4) states that the annuity provided a former spouse by court order or under section 814(a) may not exceed that to which the participant is entitled, nor may a court order be given effect by the Secretary of State if issued more than 12 months after the divorce or annulment involved becomes final.

Section 814(a)(5)(A) provides that a participant's annuity will be reduced by the amount of the annuity paid under section 814(a)(1) to a former spouse.

Section 814(a)(5)(B) provides that a recalled participant's salary will be reduced by the amount of the annuity paid to the participant's former spouse and that such amounts will be deposited in the fund.

Section 814(a)(6) provides that the annuity of the former spouse of a participant retired for disability shall not commence until the disability annuitant would have qualified for an annuity on the basis of creditable service. The amount of the annuity will be calculated on the basis of the annuity for which the participant would otherwise so qualify.

Section 814(a)(7) provides that a former spouse must make an election pursuant to section 806(h) to receive the annuity provided under section 814(a)(1) in preference to any survivor annuity to which the former spouse may be entitled under a Federal Government retirement system on the basis of a marriage to someone other than the participant.

Section 814(b)(1) provides that unless a survivor annuity is waived pursuant to section 806(b)(1)(C) or a different provision is expressly made by court order, a surviving former spouse is entitled to a survivor annuity equal to 55 percent of the participant's annuity attributable to creditable service performed while the former spouse was married to the participant.

Section 814(b)(2) provides that the survivor annuity (like the annuity under section 814(a)(1)) shall not be paid to a former spouse who remarries before age 60 and before the annuity commences.



Section 814(b)(3) provides that the former spouse's survivor annuity shall commence on the day the participant dies and shall terminate on the last day of the month before the former spouse dies or remarries before age 60. However, a survivor annuity terminated because of remarriage shall be restored at the same rate when such remarriage is terminated if any lump sum paid upon termination of the annuity is returned to the fund.

Section 814(b)(4)(A) provides that total survivor annuities with respect to a participant may not exceed 55 percent of that participant's annuity.

Section 814(b)(4)(B) limits survivor annuities under this section for beneficiaries of a participant other than the former spouse to that portion, if any, of the maximum under section 814(b)(4)(A) that is not committed to the former spouse.

Section 814(b)(4)(C) provides that a court may not adjust the annuity of a former spouse after the death of a participant or former participant.

Section 814(b)(5) allows recomputation of a participant's annuity if a former spouse's annuity rights are terminated by death or remarriage.

Section 814(c)(1) allows a participant or former participant providing a survivor annuity benefit to a former spouse to elect (or to follow a court order providing for) an additional survivor annuity for any other former spouse or spouse, if such participant passes a physical examination prescribed by the Secretary of State.

Section 814(c)(2) provides that neither the total amount of the survivor annuities elected or ordered under section 814(c) for any participant or former participant, nor the survivor annuities for any one surviving spouse or former spouse under this section and section 806(b)(3) shall exceed 55 percent of the full amount of the participant's annuity.

Section 814(c)(3)(A) provides that the participant may fund annuities elected or provided for under this subsection either through a reduction in annuity or salary or by lump-sum payment.

Section 814(c)(3)(b) provides that the participant shall be charged for additional survivor annuities elected under the subsection an amount actuarially equivalent to the value of the survivor annuities.

Section 814(c)(3)(C) provides that if a spouse or former spouse becomes ineligible for a survivor annuity provided under section 814(c)(1), then the participant's salary or annuity shall be recomputed if it had been reduced to provide for the annuity. Amounts accruing to the fund shall be refunded to the extent they exceeded the actuarial costs of providing benefits for such period that they were provided.

Section 814(c)(4) provides that survivor annuities provided under section 814(c) shall commence on the day after the participant dies and shall terminate on the last day of the month before the former spouse's death or remarriage before age 60.

Section 814(c)(5) provides that cost-of-living adjustments shall not be applicable to annuities under this subsection, unless authorized by regulations prescribed by the Secretary of State. Such regulations would require higher payments by the annuitant. This prohibition applies only to annuities payable under this subsection. As these

annuities are provided to an additional former spouse by the participant's choice, the annuity is funded entirely by contributions, at no cost to the Government.

Section 814(d) provides that section 806(1) (which states that annuities paid under this chapter shall not be less than the primary insurance amount until title II of the Social Security Act, shall not apply to annuities and survivor annuities of former spouses fixed by court order or to any additional survivor annuity provided under section 814(c). Individuals should not be able to provide intentionally small annuities under these sections and have the benefits increased under this social security minimum provision.

*Section 815—Lump-sum payments*

Section 815 provides for the return of a participant's contributions to the fund if the participant is separated from the Service without becoming eligible for an annuity as a retiree under any section of this chapter. Section 815 is identical in substance to section 841 of the 1946 act, except that the definition of "lump-sum credit" contained in section 841(a) of the 1946 act has been transferred to the definitions section (section 804(8)) and the remaining subsections accordingly redesignated. A new subsection (i) has been added providing that a portion of the lump sum be paid to the former spouse of a participant.

Section 815(a) provides for the payment of a lump-sum credit to participants who separate from the Service without becoming eligible for an immediate or deferred annuity. Participants become ineligible for a deferred annuity by not requesting a refund. Section 815(b) provides for a lump-sum credit for contributions made during a period of recall service that does not make the annuitant eligible for a supplemental or recomputed annuity. Section 815(c) provides that if annuity rights terminate before an annuity amount equal to the lump-sum credit has been paid, the difference will be paid in accordance with section 815(f). Section 815(d) provides that if a participant dies and leaves no survivor eligible for an annuity or the survivor's annuity rights terminate before a claim for an annuity is filed, then a lump-sum credit shall be paid in accordance with section 815(f). Section 815(e) prescribes payment in accordance with section 815(f) of any accrued but unpaid annuity owing with respect to a deceased participant. Section 815(f) prescribes the order of precedence for payments of lump-sum credits under subsections (c) through (e) to survivors of the participant. Section 815(g) prescribes the order of precedence for payment of any annuity accrued and unpaid on the death of a survivor annuitant. Section 815(h) provides for payment of a lump-sum credit based on contributions to the fund made by a participant after completing 35 years of service, after such contributions are applied toward any special contribution owing under section 805(d). Section 815(i) prescribes limitations on the amount of a participant's or former participant's lump-sum credit payable to a former spouse of that participant, unless expressly provided otherwise by a court order under section 820(b) (1).

*Section 816—Creditable service*

Section 816 sets forth rules specifying periods that are creditable toward retirement under the system. Section 816 follows section 851

of the 1946 act as amended by Executive order, except for the addition of subsections (h) and (i), which are explained below.

Section 816(a) authorizes credit for periods of civilian and military and naval service under rules which are identical to rules under the civil service retirement system. Section 816(b) authorizes credit for unused sick leave. Section 816(c) provides for contributions by a participant while serving as an officer or employee of an organization composed primarily of Government employees while on approved leave of absence without pay and authorizes credit for such periods of service. Section 816(d) allows a participant who has received a refund of contributions covering otherwise creditable service to make a special contribution under section 805 in order to have such period of service credited under the system. Section 816(e) provides that no credit toward annuity computation shall be made for any period of civilian service under another retirement system unless the participant waives the right to any annuity under such other system and makes a special contribution to the fund pursuant to section 805 covering such service. Section 816(f) provides that a participant who leaves the Service to enter the military service during a period of war or national emergency is not deemed to have been separated from the Service for retirement purposes for a period of 5 years unless the participant requests and receives a lump-sum payment pursuant to section 815.

Section 816(g) provides that the annuity or survivor annuity of a participant of Japanese ancestry who was interned in the United States during World War II may be recomputed to allow credit for such period of internment upon application to the Secretary of State. Other provisions of the new subsection provide that the Secretary of State will take steps to identify and assist individuals who may be entitled to credit under this subsection, and that other agencies having information on such participants will furnish it on request to the Secretary. This provision was extended to the Foreign Service by Executive order.

New section 816(h) provides that a participant who serves as a full-time paid employee of a member or office of the Congress while on approved leave without pay shall continue to make contributions to the fund based on the salary he would be receiving if on active duty in the Service. The subsection also provides that the employing office of the Congress will make a matching contribution to the fund and that such periods of service will be creditable to retirement under the system. The purpose of this new subsection is to set forth clear rules governing the retirement obligations and benefits applicable during such employment. It will prevent a participant from obtaining a wind-fall benefit by remaining a member of the service and continuing in Federal employment and so receiving service credit without a corresponding obligation to contribute to the fund.

New section 816(i) sets forth rules for determining which periods of service shall be considered creditable service for purposes of determining benefits accorded to former spouses. Section 816(i) provides that periods of service by a participant on approved leave without pay as an officer or employee of an organization composed primarily of Government employees shall be considered creditable service for purposes of benefits to former spouses, even though the election required

by section 816(c) (1) or the contribution required by section 816(c) (2) was not made. Likewise, service is creditable for purposes of former spouse's benefits for periods for which a refund of contributions has been made to the participant which has not been returned to the fund by the participant through a special contribution under section 805. Section 816(i) also provides that a former spouse shall not be considered to have been married to the participant for the creditable years of service added by sections 808(a) and 809(e) in calculating the benefits of disability annuitants and of survivors of those who died in service, nor for additional credit for service at an unhealthful post unless the former spouse resided with the participant at such post when the credit was earned.

*Section 817—Extra credit for service at unhealthful posts*

Section 817 authorizes credit toward retirement at the rate of 1½ years for each year of actual service at posts designated as unhealthful by the Secretary of State. Such credit is in lieu of a differential under 5 U.S.C. 5925 or 5928.

*Section 818—Estimate of appropriations needed*

Section 818 requires the Secretary of the Treasury to prepare annual estimates of the appropriations required to be made to the Fund and to make actuarial valuations of the System at least every 5 years. Section 818 also authorizes the Secretary of State to expend up to \$5,000 per year from the Fund for necessary incidental administrative expenses of the System.

*Section 819—Investment of the fund*

Section 819 authorizes the Secretary of the Treasury to invest in interest-bearing securities of the United States portions of the Fund not necessary for immediate operations.

*Section 820—Assignment and attachment of moneys*

Section 820 provides for exceptions to the rule stated in section 864 of the 1946 act that moneys receivable under the System are not assignable (except for severance pay) and are not subject to execution, levy, attachment, or other legal process. The number and scope of these exceptions were expanded by Executive order. Section 820(a) (1) permits an individual entitled to an annuity from the Fund to make allotments or assignments of amounts from such annuity for such purposes as the Secretary considers appropriate. Section 820(a) (2) authorizes the assignment of severance pay benefits received in accordance with section 609(b) (1). This subsection is identical in substance to section 634(c) of the 1946 act. Section 820(b) (1) (A) authorizes payment in accordance with a court order of sums otherwise payable to a former spouse pursuant to sections 814 (a), (b), (c), or 815 (b) or (c). Section 820(b) (1) (B) provides that this will not apply if the Secretary of State determines that the court order is inconsistent with the requirements of chapter 8. Section 820(b) (2) provides that, except with regard to obligations between participants and former spouses, the Secretary of State shall make payments under this chapter that would otherwise be made to an annuitant or participant in accordance with an express court order. Section 820(b) (3) provides that pay-

ments will be made only after written notice and other required information and documentation have been furnished to the Secretary. Section 820(b)(4) provides that the fund may in no case be required to make a second payment of the same annuity obligation to a second individual. Section 820(b)(5) makes it clear that the requirement that a person have been married to a participant for 10 years to qualify as a "former spouse" entitled to benefits under chapter 8 does not bar an award under state law of rights in a participant's annuity to a spouse or former spouse not qualifying for benefits under chapter 8. However, no payment would be made from the fund except as authorized by this chapter or other applicable law. Section 820(c) restates the former rule, as modified by new subsections (a) and (b), that moneys payable under chapter 8 are not subject to legal process except as otherwise provided by Federal law. This section does not affect 42 U.S.C. 659, which makes compensation of Federal employees subject to legal process to enforce legal obligations for child support and alimony.

*Section 821—Payments for future benefits*

Section 821 provides that any statute authorizing new or liberalized benefits, extensions of benefits, or salary increases that increase the liability of the Fund is deemed also to authorize appropriations to finance the unfunded liability created by that statute in 30 equal annual installments. Section 821 also authorizes an appropriation for each fiscal year of the Foreign Service normal cost (cf. section 804(5)) for that year which is not met by contributions to the Fund under section 805(a).

*Section 822—Unfunded liability obligations*

Section 822(a) provides that the Secretary of State shall notify the Secretary of the Treasury at the end of each fiscal year of the amount equivalent to the interest on the unfunded liability computed for that year and that portion of disbursement for annuities attributable to credit allowed for military service. Section 822(b) provides that the Secretary of the Treasury shall credit such amounts as are reported in section 822(a) to the fund out of any money in the Treasury not otherwise appropriated. Section 822(c) provides that requests to Congress for appropriations to the Fund under section 821(b) shall include reports on the sums credited to the Fund under section 822(b). Obsolete transitional provisions contained in the corresponding section of the 1946 act have been deleted.

*Section 823—Annuity for recall service*

Section 823 is identical in substance to section 871 of the 1946 act. Section 823(a) provides that an annuitant recalled to active duty in the Service will receive his or her salary in lieu of an annuity and will make contributions to the Fund while on recall service, but that the annuity shall resume on the day following the termination or recall service. Section 823(b) provides for refund of the annuitant's contributions to the Fund during recall service which lasts a year or less, for a supplemental annuity if the recall service lasts more than a year, and for a recomputation of the basic annuity if the recall lasts more than 5 years.

*Section 824—Reemployment*

Section 824(a) establishes a new ceiling on the amount a retired member of the Service may receive upon reemployment by the Federal Government from his or her salary and annuity combined. Under the 1946 act, while such a member may receive his or her salary regardless of amount, he or she will be paid only so much of his or her annuity as, when combined with the salary, will not exceed during any calendar year the basic salary which the member was entitled to receive at the time of retirement.

The new section, introduced by Senator Pell, would set the ceiling on combined pension and new salary at the current salary level for the rank at which a former FSO retired. The principle would thus be preserved that a retired government employee should not be able to earn more by retiring than by remaining on active duty, but it would provide an incentive for him to accept another government job where his experience could be utilized.

Section 824(b) provides that an agency or other entity of the Federal Government that employs a retired member of the Service shall notify the Secretary of State of such reemployment and shall pay the member's salary directly to such member.

Section 824(c) provides for recovery (cf. section 807) of overpayments of annuities made in excess of the amount to which a retired member is entitled under section 824(a) by withholding from his or her salary or from other moneys, including annuity payments, payable under chapter 8 of the act.

*Section 825—Voluntary contributions*

Section 825, which is identical in substance to section 881 of the 1946 act, provides for the disposition of voluntary contributions to the Fund made under prior laws authorizing such contributions. On the date on which the participant becomes eligible for an annuity or a deferred annuity, he or she may choose to have such voluntary contributions refunded in a lump sum or used to purchase an additional annuity or annuities.

*Section 826—Cost-of-living adjustments of annuities*

Section 826 provides for cost-of-living adjustments to annuities under the System to correspond to cost-of-living adjustments of annuities under the civil service retirement system.

*Section 827—Compatibility between Civil Service and Foreign Service Retirement Systems*

Section 827 provides that, whenever, a law of general applicability is enacted which affects participants, annuitants, or survivors under the Civil Service Retirement and Disability System and alters previously existing conformity between that system and the Foreign Service Retirement System, then such law shall also extend to the Foreign Service Retirement and Disability System. The President is required to prescribe regulations by Executive order to implement this section. Section 827 is identical in substance to section 805 of the 1946 act.

### Chapter 9—Travel, Leave and Other Benefits

Chapter 9 continues the Secretary's authority to pay travel and related expenses, and to provide for home leave and health care for Foreign Service personnel and their families. The following new provisions would be added:

- Authority to pay relocation allowances to members of the Foreign Service on domestic transfers.
- Authority to grant an additional R&R trip in extraordinary circumstances.
- Authority to authorize travel for a child when a parent is medically evacuated and the child is unable to remain at post alone.
- Authority to provide one round-trip per year between a post abroad and nearest port of entry in the United States for children of divorced member of the Service to visit the parent with whom they do not normally reside.
- Authority to authorize travel for family to accompany members on extended travel orders, whether or not such travel is in connection with a reassignment.
- Provision for payment of representation allowances to family members when authorized, as well as to employees.

#### *Section 901—Travel and related expenses*

Section 901 brings together provisions relating to payment of travel and related expenses for members of the Foreign Service and their families. The authorities contained in this section will continue to be implemented by regulations, primarily the Foreign Service Travel Regulations. Section 901 largely derives from section 911 of the 1946 act, although provisions of section 942 relating to travel for medical purposes have also been included.

Section 901(1), derived from section 911 (1) and (2) of the 1946 act, authorizes payment of travel and related expenses involved in proceeding to and returning from assigned posts of duty. This includes assignment to posts in the United States, such as the United Nations in New York, or to the Department or certain international organizations in Washington, D.C.

Section 901(2), also derived from sections 911 (1) and (2) of the 1946 act, authorizes payment of expenses incurred while traveling on authorized or required home leave. Home leave is authorized by 5 U.S.C. 6305 and by section 903 of this bill.

Section 901(3), which expands section 911(10) of the 1946 act, authorizes payment of expenses incurred when a family member accompanies a member of the Service on temporary duty. This provision permits families to avoid being separated, for example, for as long as 6 months when a member is sent to Washington for consultations. Under present law, this type of travel for family members is limited to occasions when the temporary duty is ordered in connection with travel to or from a new post of assignment or in connection with home leave. This bill broadens this authority to permit its use with other temporary duty.

This provision will also permit family members to accompany employees detailed to international conferences or given other temporary assignments expected to last unusually long periods of time. It is unreasonable, except in emergency situations, to order employees to distant posts for extraordinarily long periods without the opportunity for their families to accompany them. It is cheaper to authorize family members to accompany an employee on extended temporary duty than it would be to assign the employee to the location and ship the effects.

Section 901(4) authorizes payment for representational travel of a member of the Service and his or her family, subject to the limitation that no more than one family member may have expenses paid when accompanying the Foreign Service member on representational travel outside the country of the member's assignment. Both the authority and the limitations are substantially the same as under sections 911 (1) and (2) of the 1946 act.

Section 901(5), which is derived from section 942 of the 1946 act, authorizes payment for travel to obtain necessary medical care while abroad in a locality when there is no suitable person or facility to provide such care. The scope of the provision has been clarified by the inclusion of the term "medical condition" to indicate that medical travel may be authorized for prenatal care or other necessary medical attention. A new provision authorizes payment of the travel expenses of a family member incapable of caring for himself or herself at post. This authority is particularly important with respect to infants whose parents are medically evacuated.

Section 901(6) authorizes payment for travel for rest and recuperation from posts designated by the Secretary which present significant hardships for the members of the Service and his or her family. This includes conditions such as danger, isolation, unfavorable climatic conditions, or completely inadequate recreational facilities. Such travel is limited to one trip per 2-year tour or two trips per 3-year tour, unbroken by home leave, but the Secretary may allow an additional trip or trips in extraordinary circumstances. Section 901(6) is derived from section 911(9) of the 1946 act. The authority for the Secretary to permit additional trips in extraordinary cases is added because there are a few posts at which members of the Service encounter such isolation and difficult conditions that more frequent trips for rest and recuperation are essential to the well-being of individuals and the efficiency of operations.

Section 901(7) authorizes payment of travel expenses and transportation costs incident to the departure of family members and shipment of personal effects, including automobiles, from a post where there is danger arising from unsettled conditions due to war, civil strife, natural disasters, et cetera. This section also authorizes payment for the return of family members and property when the disturbed conditions have ceased. Section 901(7) is substantially the same as section 911(7) of the 1946 act.

Section 901(8) authorizes payment of travel expenses for two trips a year by members of the Service to visit family members unable to live with the member at post because of continuing disturbed conditions there. Trips to visit family members located abroad may be authorized so long as the total costs paid do not exceed the cost of two



round trips at less than first class rates to the District of Columbia. Section 901(8) is derived from section 911(11) of the 1946 act. A provision that facilities of the Military Airlift Command be used where possible has been deleted as unnecessary. Section 901(8) covers those situations where families stay in Washington, D.C., but it also covers the case of a family which chooses to live close to the post where the Foreign Service member is stationed when they are not permitted to live at post.

Section 901(9) authorizes payment for emergency family visitation. It is derived from section 911(11) of the 1946 act and is intended to mitigate the personal hardship which is increased when great distances separate families, because of an assignment by the Government, as is the case when members are assigned abroad and have a personal emergency in the United States.

Section 901(10) authorizes payment for the costs of preparing and transporting to their home the remains of members of the Service or their families who die abroad or while in travel status. This section is identical in substance to section 911(8) of the 1946 act.

Section 901(11) authorizes payment for transportation of the furniture and household effects of members of the Service to their duty posts and to their places of residence upon termination of duty abroad. This section is identical to section 911(3) of the 1946 act.

Section 901(12) authorizes payment for packing and storing the furniture and effects of a member of the Service. This section is derived from sections 911 (4) and (5) of the 1946 act, although it deletes as unnecessary a provision stating that the maximum weight of goods stored shall not exceed the maximum weight that could be shipped under applicable maximum combined storage and shipment allowance stated in the Foreign Service Travel Regulations.

Section 901(13) provides explicit authorization within the requirements of 5 U.S.C. 5727 and 5742 for the transportation of a privately owned motor vehicle for a member of the Service once for every 4 years the member is serving continuously abroad. A replacement vehicle may be transported for a member of the Service if the Secretary determines such replacement to be necessary for reasons beyond the control of the member and in the best interest of the Government or if, in connection with a transfer, the cost of transporting the replacement vehicle is less than or equal to the cost of shipping the member's present vehicle from the former post of duty to the new post. Section 901(13) is derived from section 913 of the 1946 act. The provision for replacement of a vehicle incident to transfer is new and should avoid the unnecessary expense of transporting older vehicles which are about to be replaced, often because they cannot meet the inspection requirements of the country in which the member is serving.

Section 901(14) authorizes payment of the travel and relocation expenses of members of the Service and their families in connection with assignments to or within the United States, including assignments to State and local governments. This section provides authority similar to that contained in section 576(f) of the 1946 act with respect to assignments to State and local governments under the so-called Pearson program. It also permits reimbursement of relocation expenses incurred by members of the Service on other assignments to

or within the United States for which they are not now authorized to be reimbursed and for which other employees of the Government are reimbursed under 5 U.S.C. 5724(a). Section 901(14) would also authorize members of the Service assigned to State and local governments under the Intergovernmental Personnel Act (5 U.S.C. 3371-76) to be reimbursed for travel expenses on the same basis and under the same rules as are now authorized in connection with all other types of Foreign Service assignments.

Section 901(15) is new and authorizes payment for the international portion of one round trip per year between a Foreign Service post abroad and another country for children of members of the Foreign Service to visit their parents when there is a family separation. If the trip is for a child who wishes to visit the member abroad, a payment under this section is permitted if the member is not receiving an education allowance or an educational travel allowance under 5 U.S.C. 5924(4).

More and more frequently in the Foreign Service, divorce, unsettled conditions at posts abroad, or the demands of a spouse's career lead to separations of members of the Service from their children. Members of the Service who wish to maintain contact with their children while stationed abroad frequently find the travel costs to be prohibitive. This section is designed to permit Foreign Service families to lead as nearly normal lives as possible, given the requirement of overseas service, so as to help retain able personnel who find themselves in such divided family situations. This section is another reflection of the view of the committee that the policies of the Government should not force a member of the Service to have to choose between his or her career and the family.

*Section 902—Loan of household effects*

Section 902 authorizes the loan of household furnishings and equipment to members of the Service for use in personally owned or leased residences as a means of reducing transportation costs. Section 902 is substantially the same as section 912 of the 1946 act.

*Section 903—Required leave in the United States*

Section 903 authorizes the Secretary to order a member of the Service who is a U.S. citizen to take a statutory leave of absence in the United States after 18 months of service abroad, and requires the Secretary to do so as soon as possible after the member has completed 3 years of service abroad. Section 903 also provides that members of the Service in the United States on statutory leave of absence may be given work in the Department, but that such periods of work will not be counted as leave. Section 903 is identical in substance to section 933 of the 1946 act and conforms to the definitions of home leave contained in 5 U.S.C. 6305.

*Section 904—Health care*

Section 904 combines and revises several sections of the 1946 act relating to the provision of health care for members of the Service.

Section 904(a) authorizes the Secretary of State to establish a health care program to promote and maintain the physical and mental health of members of the Service and their families, and of other per-

sonnel of the Department or other agencies and members of their families who are abroad and are designated as eligible through regulation or interagency agreement.

Section 904(b), which is derived from section 943 of the 1946 act, provides that such a program may include, for example, medical examinations for applicants for employment and for Department personnel and members of the Service and their families, and may include inoculations and vaccinations for such personnel and family members. It may also include examinations necessary to establish disability or incapacity or to provide survivor benefits under chapter 8. Other health care not specified, such as noncosmetic dental care, could also be provided at Foreign Service posts where warranted.

Section 904(c) authorizes the Secretary of State to establish health care facilities at posts abroad to the extent such facilities are warranted. Section 904 is identical in substance to section 945 of the 1946 act.

Section 904(d), derived from section 941 of the 1946 act, authorizes the Secretary to pay the costs of hospitalization or similar treatment for individuals eligible for health care under this section. Limits on payments may be waived if the illness, injury or medical condition being treated was incurred, caused, or materially aggravated during periods abroad. This subsection eliminates a specific \$3 deductible provision and a 120-day maximum coverage for payment for hospitalization or similar treatment of a family member of the Service in certain circumstances. It also eliminates the provision that treatment for an illness or injury is not compensable if the condition resulted from "vicious habits, intemperance, or misconduct." These provisions are outdated and it is intended that limits on payment under this section will be established by regulation which will permit adjustment to take account of the factors addressed specifically in the 1946 act.

Section 904(e) authorizes the Secretary of State to provide health care under this section beyond the date of separation of eligible personnel and to provide health care to family members beyond the date of death of such personnel or of dissolution of a marriage. Section 904 (e) is derived from section 944 of the 1946 act. The provision allowing benefits to continue after dissolution of marriage is new. It merely avoids immediate termination of a family member's medical treatment for a condition sustained abroad if the employee later obtains a divorce. It is not intended to provide continuing health care for a spouse following a divorce when the condition is not related to service abroad.

Section 904(f) authorizes the Secretary of State to use appropriate funds to contract for health care where he or she deems it advisable. The section is derived from section 941(c) of the 1946 act and recognizes that there are certain areas where good health care is available in country and where it is consequently not necessary to bring in U.S. medical personnel.

#### *Section 905—Representation expenses*

Section 905 is derived from section 901 of the 1946 act. It authorizes the Secretary to provide for official reception and entertainment and other representational expenses of members of the Service and family members in order to enable the Department and the Foreign Service

to provide proper and effective representation of the United States and its interests. The prohibition in 5 U.S.C. 5536 against extra pay for personnel continues to be expressly inapplicable to representation allowances under this section.

During its consideration of this provision, the committee adopted an amendment of Senator Hayakawa which requires the Secretary of State to utilize to the maximum extent practicable American products (including American wines) in carrying out this provision.

#### Chapter 10—Labor-Management Relations

Chapter 10 draws from the existing system in the Foreign Service established by Executive Order 11636 as well as Title VII of the Civil Service Reform Act which governs labor-management relations in the Civil Service. This chapter authorizes collective bargaining on conditions of employment in the Foreign Service, subject to certain excluded areas of management rights comparable to those matters excluded from bargaining under Title VII. This chapter continues the present arrangements of a single agency-wide bargaining unit, and the inclusion of many employees who perform supervisory functions.

Chapter 10 establishes a Foreign Service Labor Relations Board, as an entity under the Federal Labor Relations Authority, to manage this new statutory program. The Board would be chaired by the Chairman of the Federal Labor Relations Authority and would have two public members appointed from nominees approved by the agencies and the unions. In addition to the Board, Chapter 10 would retain the Disputes Panel as constituted under E. O. 11636. However, a major difference is the authority of the Panel to make final and binding decisions on negotiation impasses. This chapter also introduces a new, independent third party; namely, the General Counsel, an entity of the Federal Labor Relations Authority. The General Counsel would investigate alleged unfair labor practices and would file and prosecute such complaints. The chapter also provides for appeals to the Foreign Service Grievance Board, under negotiated procedures, in disputes arising out of the implementation of collective bargaining agreements.

##### *Section 1001—Labor-management policy*

Section 1001 contains congressional findings which establish the policy basis for the labor-management chapter and provides that this chapter is to be construed in a manner consistent with efficient and effective government. It is derived from 5 U.S.C. 7101.

Section 1001(1) restates the general finding that statutory protection of the right of workers to organize, bargain collectively and participate through labor organizations of their own choosing is desirable in the public interest. Section 1001(2) states the necessity for the highest standards of performance by members of the Service and the continuous development and implementation of modern work practices to enhance performance and efficiency.

In recognition of the unique conditions of Foreign Service employment, section 1001(3) expresses the need for a distinct framework for the development and conduct of relationships between management officials and organizations representing members of the Service. Chapter 1 provides this framework.

*Section 1002—Definitions*

This section defines the basic organs of administration, personnel categories, and labor relations terms utilized by this chapter. The definitions set the chapter's coverage and the exclusions from coverage for individuals, agencies, and labor organizations.

Section 1002(1) defines "Authority" to mean the Federal Labor Relations Authority described in 5 U.S.C. 7104(a).

Section 1002(2) defines "Board" as the Foreign Service Labor Relations Board, established by section 1006(a) of this bill.

Section 1002(3) defines "collective bargaining" to reflect the concept as it has existed for many years in the private sector. The definition confirms the mutual obligation of the Department and exclusive employee representative bilaterally and in good faith to negotiate the conditions of employment affecting employees, and to incorporate the successful results of such negotiations into a written agreement, if requested by either party.

Section 1002(4) defines "collective bargaining agreement" as an agreement resulting from the collective bargaining process set forth in this chapter.

Section 1002(5) defines "conditions of employment" to be personnel policies, practices, and other matters affecting working conditions which are within the discretion of the Secretary. Excluded are matters related to prohibited political activities, designation or classification of positions, Government-wide or multiagency responsibilities of the Secretary affecting agencies not authorized to utilize the Foreign Service personnel system, and matters specifically provided for by law—for example, pay and benefits. Other important exclusions are listed under section 1005. Conditions of employment were undefined in Executive Order 11636. This definition is essentially identical to that contained in 5 U.S.C. 7102(a)(14), as added by the Civil Service Reform Act of 1978.

Section 1002(6) defines "confidential employee" as one who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations. This definition follows that contained in 5 U.S.C. 7103(13).

Section 1002(7) defines "dues" generically to mean dues, fees, and assessments.

Section 1002(8) defines "employee" to include U.S. citizen members of the Foreign Service, or former members whose employment ceased because of an unfair labor practice under section 1015. Excluded are management officials, confidential employees, consular agents, and any participant in a strike in violation of 5 U.S.C. 7311. The exclusions parallel those in the Civil Service Reform Act of 1978 (5 U.S.C. 7103(a)(2)(i)-(iv)). The definition of employee is central to chapter 10 in establishing those individuals eligible for labor organization representation.

Section 1002(9) defines "exclusive representative" to mean any labor organization which is certified as the exclusive representative of employees under section 1011. It parallels the definition contained in 5 U.S.C. 7103(16), but omits the "grandfather clause" as unnecessary.

Section 1002(10) defines "General Counsel" to mean the General Counsel of the Federal Labor Relations Authority.

Section 1002(11) restates without substantive change the definition of "labor organization" in 5 U.S.C. 7103(4).

Section 1002(12) defines "management official" to include a chief of mission, principal officer, a Presidential appointee, one who holds a position of comparable importance, a deputy to any of the foregoing, a person assigned to carry out functions of the Inspector General of the Foreign Service, or one engaged in the administration of this chapter or in the formulation of personnel policies and programs of the Department. Management officials and employees acting in a confidential capacity to those officials constitute agency management responsible for representing the interests of the U.S. Government in dealing with the labor organization representing the Department's employees. This definition establishes the delineation between the bargaining unit and management. Because of the unique nature of the Foreign Service, this definition of a bargaining unit is not intended to be a precedent for any other Federal personnel system.

Section 1002(13) defines "Panel" to mean the Foreign Service Impasse Disputes Panel, established by section 1010(a) of this bill.

Section 1002(14) restates without substantive change the definition of "person" in 5 U.S.C. 7103(1).

*Section 1003—Application*

Section 1003(a) provides that chapter 10 shall apply only with respect to the following agencies which regularly employ career members of the Foreign Service: The International Communication Agency, the U.S. International Development Cooperation Agency, and the Departments of State, Commerce, and Agriculture.

Sections 1003 (b) and (c) authorize the President to exclude by Executive order any subdivision of the Department from coverage under this chapter for national security requirements, or to exclude a Foreign Service post temporarily in emergency situations. Subdivisions of the Department subject to such exclusion must have as a primary function intelligence, counterintelligence, investigative, or national security work. This section is similar to 5 U.S.C. 7103(b).

*Section 1004—Employee rights*

Section 1004 guarantees employees the right to form, join, or assist a labor organization, or to refrain from such activity.

These rights include acting as a representative of a union and presenting its views to the Secretary, Congress, or other authorities, as well as negotiating conditions of employment through representatives chosen by employees. This statement of basic employee rights existed in substantial part in section 1(a) of Executive Order 11636, and parallels the Civil Service Reform Act (5 U.S.C. 7102).

*Section 1005—Management rights*

Section 1005(a) reflects the public policy against the Department being required to bargain on basic Federal Government management prerogatives. Bargaining is not required on such matters as the mission, budget, organization, number of individuals in the Service and in the Department, and internal security practices of the Department; the right to hire, assign, direct, lay off and retain employees, or to suspend, remove, or take other disciplinary action against such individuals and the right to determine the number of members of the Service to be

promoted and to affect promotions as permitted under section 605(b); to assign work, contract out, and determine personnel by whom operations shall be conducted; to fill positions from any appropriate sources; to require uniform personnel policies and procedures between or among agencies covered by this chapter; and to take necessary actions in an emergency to carry out the Department's mission.

Section 1005(b) permits the Department to decide to negotiate with a labor organization on a number of issues. At the election of the Department, negotiation may take place on the number, types, and classes of employees or positions assigned to any organizational subdivision, work project, or tour of duty, or on the technology, methods, and means of performing work. The Department and the labor organization may also negotiate on the procedures which management officials of the Department will observe in exercising any of the functions under section 1005, and on appropriate arrangements for employees adversely affected by the exercise of any of these functions by such management officials.

This section, which parallels 5 U.S.C. 7106, makes explicit the distinction which arose from interpretation of the management rights provision under Executive Order 11636. While management's decision-making in exercising the reserved rights is nonnegotiable, the procedures which management officials will observe in exercising their functions are within the obligation to negotiate. However, management is not obligated to negotiate over a procedure so cumbersome or time delaying as to negate, in essence, the exercise of a reserved management right. The exclusion of matters from the scope of collective bargaining by this section is not intended to impede full discussion between the Department and the exclusive representative on basic issues affecting the careers of members of the Service.

*Section 1006—Foreign Service Labor Relations Board*

Section 1006 provides for the Foreign Service Labor Relations Board (FSLRB) to be established within the Federal Labor Relations Authority.

The FSLRB is chaired by the Chairman of the Federal Labor Relations Authority (FLRA) and has two executive level V public members appointed by the Chairman upon nomination by affected agencies and labor organizations. FSLRB members are removable only for cause after notice and a hearing.

*Section 1007—Functions of the Board*

Section 1007 provides that the FSLRB is charged with supervising elections and certifying exclusive bargaining agents; deciding unfair labor practice complaints and issues relating to the obligation to bargain in good faith; resolving disputes concerning the effect, interpretation, or breach of a collective bargaining agreement; and taking other actions necessary to effectuate the provisions of this chapter. Decisions of the FSLRB are to be consistent with FLRA decisions, except where special circumstances require otherwise. FSLRB decisions will not be precedents for the FLRA, but the committee expects that there will be a recognition by the FLRA of the precedential value of FSLRB decisions to the Foreign Service generally. The FSLRB possesses broad authority to prescribe regulations concerning its functions and the obligations of the Department and labor organizations

thereunder, to interpret and apply the provisions of this chapter, to issue major policy determinations, to issue cease and desist and remedial action orders, and to defend or seek enforcement of its orders in the U.S. Court of Appeals for the District of Columbia in the same manner as is applicable to the Federal Labor Relations Authority under the Civil Service Reform Act. Administrative and staff support will be provided by the Federal Labor Relations Authority.

Executive Order 11636 charged the Employee-Management Relations Commission (EMRC) with the basic functions now assigned the FSLRB. However, the EMRC was wholly comprised of Government officials, and its orders were not subject to judicial review and enforcement. While the EMRC performed with distinction and was accepted by the Department and affected exclusive employee representatives, Foreign Service labor-management relations have evolved to the stage where third-party administration should be conducted by a body having every appearance of total impartiality in addition to de facto neutrality.

*Section 1008—Functions of the General Counsel*

Section 1008 provides that the General Counsel of the FLRA may investigate alleged unfair labor practices, file and prosecute complaints under chapter 10, and exercise such other functions as the FSLRB prescribes. The functions of the General Counsel are intended to be the same as under chapter 71 of title 5, United States Code.

*Section 1009—Judicial review and enforcement*

Section 1009(a) provides that, except with respect to implementation dispute decisions of the Foreign Service Grievance Board, which are excluded from judicial review by section 1014(d), any person aggrieved by an FSLRB order may appeal to the U.S. Court of Appeals for the District of Columbia within 60 days. Section 1009(b) provides that the FSLRB may petition the D.C. Circuit Court of Appeals for enforcement of FSLRB orders or for appropriate temporary relief or a restraining order. Section 1009(c) provides that standards applicable to judicial review and enforcement of FLRA orders also apply to the FSLRB. Section 1009(d) provides that temporary relief may be provided by the U.S. District Court for the District of Columbia against a person or persons formally charged under section 1016 with engaging in an unfair labor practice.

*Section 1010—Foreign Service Impasse Disputes Panel*

Section 1010 provides for a Foreign Service Impasse Disputes Panel (the "Panel") within the Federal Labor Relations Authority. The Panel, like its namesake operating under Executive Order 11636, will resolve negotiation impasses between the Department and the exclusive bargaining representative. The Panel will carry over the basic composition of its predecessor. The Panel's decisions will be final and binding upon the parties unless the parties agree otherwise.

*Section 1011—Exclusive recognition*

Section 1011 sets forth the requirements for exclusive recognition and the grounds for denial of exclusive recognition. This provision recognizes the unique requirements for exclusive representation of a Foreign Service scattered over 283 separate posts throughout the world.



Section 1011(a) directs the Department to accord exclusive representation to a labor organization selected by secret ballot by a majority of the unit's employees who cast valid ballots in the election.

Section 1011(b) sets forth procedures to be followed when a question of representation arises.

Section 1011(c) defines those labor organizations which may intervene with respect to a petition filed under section 1011(b).

Section 1011(d) states that the Board shall determine those eligible to vote in any election under this section and shall establish regulations governing such elections. The Board is also directed to conduct preferential elections when more than two choices are contained on the ballot to obviate the undue expense and time consumption of run-off worldwide mail ballot elections.

Section 1011(e) requires any labor organization seeking exclusive recognition to submit to the Board and to the Department a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. This information will aid the Board in making determinations under section 1011(f).

Section 1011(f) states the grounds for denial to a labor organization of the status of exclusive representative. These include a determination that the labor organization is subject to corrupt influence, or influences opposed to democratic principles or a finding that, in the case of a petition filed under section 1011(b)(1)(A), there is not credible evidence that at least 30 percent of the employees wish to be represented by that labor organization.

Section 1011(g) states that nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election under the rules and regulations or decisions of the Board.

#### *Section 1012—Employees represented*

Section 1012 provides for a single bargaining unit consisting of all Foreign Service employees of each agency affected by this chapter, excluding personnel officers, investigators, and those who audit the work of individuals for certain purposes. Executive Order 11636 contemplated a Department worldwide bargaining unit, a requirement carried forward in this bill because of the highly centralized Foreign Service personnel system and the constant and regular worldwide movement of all Foreign Service personnel.

The concept of a single agencywide bargaining unit reflects the fact that the most essential features of the Foreign Service—promotions by selection boards, worldwide assignability, and special benefits—are applicable to all employees regardless of rank or occupation. Bargaining units embracing only a segment of the Service, whether on a functional, organizational, or geographic basis, would not possess significant stability of personnel to permit effective dealings or efficiency of agency operations. Questions of representation could arise frequently as different individuals were assigned to and from the bargaining unit.

It is true that communicators, political officers, and secretaries, for example, do have different interests, primarily in the area of enhancing professional competence. These differences, however, are overshadowed by a broad area of commonality of interest.

Moreover, a representative of employees in a bargaining unit consisting of only one segment of the Service within an agency could negotiate only on the very limited range of issues which are within the authority of the head of that segment of the Service. This would result in substantially less effective representation for employees.

Therefore, it would not serve the best interests of the Service to fragment a small Foreign Service along the lines of rank, occupation, geography, or on any other basis. This chapter accordingly reflects the need for a highly centralized Foreign Service personnel system.

*Sections 1013—Representation rights and duties*

Section 1013(a) requires an exclusive bargaining representation to represent the interests of all employees in the unit without regard to labor organization membership. Exclusive bargaining representatives are entitled to act for, and negotiate collective bargaining agreements on behalf of, all unit employees.

Section 1013(b) states that the exclusive representative is entitled to be present during personnel-related meetings (including meetings concerning grievances) between the Department and one or more employees, and to be present when requested by an employee who is subject to Department examination and who reasonably believes that the examination may result in disciplinary action against him or her.

Section 1013(c) requires the Department and the exclusive representative to negotiate in good faith. The obligations growing out of this duty are set forth in section 1013(e).

Section 1013(d) provides that the rights of the exclusive representative shall not preclude an employee from being represented by an attorney or other representative of the employee's choosing in any separation-related proceeding or from exercising grievance or appeal rights established by law or regulation.

Section 1013(e) sets forth the mutual obligations of the Department and the exclusive representative to conduct negotiations with the objective of reaching agreement. Therefore, obstacles to such good faith negotiating are to be minimized.

Section 1013(f) states that any agreement between the Department and the exclusive representative shall be subject to the approval of the Secretary. Unless the Secretary finds in writing that the agreement is contrary to law, he or she must approve the agreement within 30 days. If approved, the agreement becomes effective 30 days from its execution.

Section 1013(g) also provides for consultation with the exclusive representative on matters which are excluded from the scope of collective bargaining because they involve interagency responsibilities of the Secretary. Under this section, the exclusive representative will, for example, be given an opportunity to express views on such issues as proposed significant changes in the Standardized Regulations (Government, Civilians, Foreign Areas), which prescribe overseas allowances and differentials in implementation of 5 U.S.C. 5921-5925 for personnel of all agencies.

*Section 1014—Resolution of implementation disputes*

Section 1014 establishes a procedure for the resolution of disputes between the Department and the exclusive representative which arise out of the implementation of collective bargaining agreements. This

section is modeled after 5 U.S.C. 7121, and 7122 as those provisions relate to such "institutional" grievances.

Section 1014(a) provides that a dispute over the effect, interpretation, or a claim of breach of a collective bargaining agreement shall be resolved by negotiated procedures, which shall include provision for appeal to the Foreign Service Grievance Board. (The Grievance Board is the statutory equivalent for the Foreign Service of the third-party arbitration of individual civil service employee grievances under title VII of the Civil Service Reform Act.)

Section 1014(b) provides for review of Grievance Board actions by the Foreign Service Labor Relations Board at the request of either party. The scope of such review is the same as that of Federal Labor Relations Authority review of arbitral awards under 5 U.S.C. 7122.

Section 1014(c) provides that Foreign Service Grievance Board action becomes final and binding on the parties to an implementation dispute if no request for review is filed within 30 days. Section 1014(d) provides that resolutions of disputes under this section are not subject to judicial review. These subsections parallel the Civil Service Reform Act (cf. 5 U.S.C. 7122(b), 7123(a)). This subsection does not affect the right of judicial review of an individual grievance as provided by section 1110 of the bill.

*Section 1015—Unfair labor practices*

Section 1015 identifies unfair labor practices in a manner consistent with 5 U.S.C. 7116. Some unfair practices are of such a nature that they could be committed by either the Department or a labor organization. Others could be committed only by the Department or only by a labor organization.

Unfair labor practices by either a labor organization or the Department include the following:

- Interfering with employee rights under the chapter;
- Refusing to consult or negotiate in good faith;
- Failing or refusing to cooperate in impasse procedures or decisions;
- Otherwise failing to comply with any provisions of the chapter.

Unfair labor practices by the Department include the following:

- Encouraging or discouraging union membership;
- Sponsoring or controlling a union;
- Taking a reprisal against an employee for filing a complaint under this chapter;
- Enforcing agency regulations that conflict with a preexisting negotiated agreement.

Unfair labor practices by labor organizations include the following:

- Attempting to cause the agency to discriminate with regard to an employee's exercise of labor relations rights;
- Hindering a member's productivity or discharge of duties as an employee;
- Discriminating with regard to membership for prohibited reasons;
- Denying membership except for specified reasons;
- Calling or engaging in a strike or slowdown, or picketing that interferes with Government operations, or condoning such activity by failing to take action to prevent or stop it.

Section 1015(c) sets forth a protection for the expression of personal views concerning the election or the Government's policy relating to labor-management relations and representation generally. If they contain no threat of reprisal or force or promise of benefit and were not made under coercive conditions, such views, arguments, opinions, or statements shall not constitute an unfair labor practice or grounds for setting aside an election conducted under this chapter.

Section 1015(d) provides an election of remedies corresponding to 5 U.S.C. 7116(d) which precludes the consideration of a complaint both as an unfair labor practice and under grievance procedures.

*Section 1016—Prevention of unfair labor practices*

Section 1016 requires the General Counsel of the Federal Labor Relations Authority (FLRA) to investigate charges of unfair labor practices by the Department or by a labor organization. The General Counsel may issue a complaint pursuant to such charges, in which case a hearing will be held before the FSLRB or its designee. To the extent practicable the hearing will be similar to a trial, in accordance with standards set forth in the Federal administrative procedure provisions of title 5, United States Code, but formal rules of evidence will not apply. If the hearing substantiates the charge of unfair labor practice, then a cease and desist order will be issued or other appropriate relief ordered. If no unfair labor practice is proven, the complaint will be dismissed.

*Section 1017—Standard of conduct for labor organizations*

Under section 1017, recognition shall be accorded only to labor organizations which are free from corrupt influence or influences opposed to basic democratic principles. This section is derived from 5 U.S.C. 7120.

Standards of conduct for labor organizations are administered and enforced by the Assistant Secretary of Labor for Labor-Management Relations. Labor organizations must file financial and other reports with the Assistant Secretary.

The Foreign Service Labor Relations Board must withdraw exclusive recognition or take other appropriate disciplinary action if the labor organization is found to have violated the prohibition against strikes, work stoppages, or slowdowns.

The Employee-Management Relations Commission performed the foregoing oversight function under Executive Order 11636, but this function is more appropriately placed with the Assistant Secretary of Labor for Labor-Management Relations because of the latter's long experience and expertise in this area, and in the interest of consistent administration.

*Section 1018—Administrative provisions*

Section 1018 prescribes basic policies regarding dues allotments (which are cost-free to exclusive employee representatives and revocable at 1-year intervals); official time for employees who negotiate and participate in other proceedings on behalf of labor organizations; and prohibitions on the use of official time for activities relating to the internal business of a labor organization.

## Chapter 11—Grievances

Chapter 11 follows the major features of the existing legislation for the resolution of grievances by individuals within the Foreign Service, including appeals from internal agency procedures to the independent Foreign Service Grievance Board. The Board has broad authority to establish its own procedures (which must include a hearing in any case involving separation or other disciplinary action), compel the production of evidence and the attendance of witnesses, and direct remedial action by the Department.

With respect to employees in a bargaining unit, it provides that a grievant may choose his or her own representative.

Also added is the authority of the Grievance Board to direct payment of reasonable attorney fees as may be required by section 7701 (g) of title 5, United States Code. Deleted from Chapter 11 is the authority of the Secretary to reject a recommendation of the Grievance Board on grounds that the recommendation would substantially impair the efficiency of the Service.

### *Section 1101—Definition of grievance*

Section 1101(a) (1) carries forward the definition of grievance contained in section 692(1) (B) of the 1946 act. "Grievance" is broadly defined to encompass any act, omission, or condition subject to the Secretary's control and which is alleged to deny a U.S. citizen member of the Foreign Service rights and benefits authorized by law or regulation, or otherwise to constitute a source of concern or dissatisfaction to the member. Some examples are listed, but the list is not intended to be exhaustive. These include separation; alleged violation, misinterpretation, or misapplication of laws, regulations or published policy affecting terms and conditions of employment or career status; disciplinary actions; dissatisfaction with the working environment, which includes allegations of sexual harassment; prejudicial or potentially prejudicial defective entries in an employee's official personnel file; alleged reprisals for participating in the grievance procedures; and alleged wrongful denial of allowances, premium pay or other financial benefit.

Section 1101(a) (2) expands a parenthetical clause in section 692 (1) (B) of the 1946 act, which permitted an agency and the exclusive representative of the employees of that agency to agree to exclude additional matters from the grievance procedure. Under section 1101(a) (2), the agency and the employee organization may modify the scope of grievances as stated in the bill, not only to exclude additional matters but also to include matters now excluded. This will permit the parties to a collective bargaining agreement to agree on additional functions for the Foreign Service Grievance Board which are compatible with the Board's primary responsibilities.

Section 1101(b) is patterned on that part of section 692(1) (B) of the 1946 act which specifies the subjects on which grievances may not be filed. Other than deletion of the reference to judgments relating to examination for appointment, which is deleted as unnecessary, and the addition of a reference to tenure boards (cf. section 306(b)), and limited career extensions, the exceptions are identical to those in the 1946 act.

Section 1101(c) provides that chapter 11 shall apply only to the Departments of State, Agriculture, and Commerce and to the International Communication Agency and the U.S. International Development Cooperation Agency.

*Section 1102—Grievances concerning former members*

Section 1102 carries forward section 692(1)(C) of the 1946 act. Former members of the Foreign Service, or their survivors, may file grievances within the period specified in section 1104, but only with respect to an alleged wrongful denial during the period of service of an allowance or other financial benefit. Consistent with current practice of the Foreign Service Grievance Board, matters which have only a consequential effect upon financial benefits are not covered by this section.

*Section 1103—Freedom of action*

Section 1103(a) carries forward the first part of section 692(5) of the 1946 act. It protects participants in the processing of a grievance from any restraint, interference, coercion, harassment, discrimination, or reprisal.

Section 1103(b) and (c) carry forward the remainder of section 692(5) of the 1946 act. This section provides for the right of representation and for making witnesses available. This provision specifically provides that a grievant may choose his or her own representative at every stage of the grievance procedures.

Section 1103(d) carries forward section 692(15) of the 1946 act. It authorizes the Grievance Board to protect against disclosure of proceedings or findings with respect to a grievant and requires the Department to maintain confidentiality.

Section 1103(e) carries forward section 692(9) of the 1946 act, by requiring the Department to expedite the proceeding of security clearances.

*Section 1104—Time limitations*

Section 1104(a) carries forward section 692(3) of the 1946 act. It excludes consideration of any grievance under these procedures not presented within a period of 3 years after the occurrence or occurrences giving rise to the grievance. A new provision has been added, stating that the 3-year period may be shortened by agreement between the Department and the exclusive employee representative. The section also authorizes the Grievance Board to exclude from the 3-year (or shorter agreed) maximum period, the period during which the grievant was unaware of the grounds for the grievance and could not have discovered such grounds through reasonable diligence.

Section 1104(b) is based on section 692(1) of the 1946 act. It provides for the Department and the exclusive representative to negotiate procedures for Departmental review of grievances. The exclusive representative or an individual employee, who is not a member of the bargaining unit or whose grievance is based on separation, may file a grievance with the Board if his or her grievance is not resolved under the Department procedures within 90 days of written presentation.

*Section 1105—Foreign Service Grievance Board*

Section 1105 is derived from section 692(2) of the 1946 act and provides for the continuation of the Board established under the 1946 act.

The Grievance Board consists of not fewer than five members. Appointees may not be serving as officers or employees of the Department or as members of the Service.

Members of the Board shall be appointed for 2-year terms by the Secretary of State from nominees approved by the agency management and the exclusive employee representative(s). If the agencies and exclusive representative(s) fail to agree, the nominees will be determined by parties striking names from a list of nominees. Nongovernmental employee members of the Board, including retired Federal Government annuitants, are compensated at the daily rate of GS-18.

Section 1105(d) insulates Board members from removal unless the Secretary of State finds, under prescribed due process procedures, corruption, neglect of duty, malfeasance, or demonstrated incapacity of a member to perform his or her functions.

Section 1105(e) authorizes the Department to provide the Board with physical and personnel resources for performing its functions.

*Section 1106—Board procedures*

Section 1106 carries forward section 692 (4), (10) and (11) of the 1946 act.

Section 1106(1) authorizes the Grievance Board to adopt regulations concerning its organization and procedures, but requires it to conduct a hearing at the request of a grievant in any case involving disciplinary action, a grievant's retirement from the Service under section 607 or 608 or issues which the Board decides can best be resolved through hearing or oral argument.

Section 1106(2) provides that the grievant, the representatives of the grievant, the exclusive representative (in cases where the grievant is a member of the bargaining unit represented by the exclusive representative), and the Department's representatives are entitled to be present at the hearing. Furthermore, after considering the views of the parties and other individuals connected with the grievance, the Board may decide that a hearing should be open to others. The committee notes that this discretion is provided to the Board in recognition of the fact that it is not always desirable, in the interests of an individual grievant, to open a grievance proceeding to the public. This discretion allows the Board to admit individuals with or without restrictions concerning who may attend.

Section 1106(3) provides that parties shall be free to examine and cross examine witnesses and present documentary evidence which is not unduly repetitious within the bounds of relevance and materiality.

Section 1106(4) authorizes the parties to engage in prehearing discovery through interrogatories and depositions subject to the aforementioned standards.

Section 1106(5) requires that a Grievance Board hearing shall result in a verbatim transcript. Hearing testimony shall be given by oath or affirmation.

Section 1106(6) provides that in cases where the Board holds no hearing its record of proceedings shall be fully available to the parties for review and supplementation by the parties, and the Board shall base its decision solely upon the record.

Section 1106(7) permits the Board to conduct hearings through panels.

Section 1106(8) authorizes the Board to grant a grievant interim relief by ordering the Department to suspend actions in the nature of separating, disciplining, or recouping moneys from a grievant, where related to a grievance pending before the Board. The Board's authority to grant interim relief does not affect the authority of an agency head, chief of mission, or principal officer to exclude a grievant from official premises or from performance of official functions for good cause as stated in writing.

Section 1106(9) is new but reflects existing practice of the Board. It states the grounds upon which reconsideration by the Board may be requested.

*Section 1107—Board decisions*

Section 1107 carries forward section 692 (12), (13), and (14) of the 1946 act.

Section 1107(a) provides that the Board must decide grievances expeditiously. It must make decisions setting forth findings of fact and the rationale for the decisions.

Section 1107(b) authorizes the Board to order the Department to take prescribed courses of action, within the limitations of the Secretary's authority. These may include such actions as correcting official personnel records, reversing disputed decisions affecting the grievant, retention of the member in the Service, reinstatement of the grievant and the granting of back pay, and the payment of reasonable attorney's fees to the same extent and in the same manner as is provided for employees who prevail before the Merit Systems Protection Board. Under the Civil Service Reform Act, the Merit Systems Protection Board may order an agency to pay attorney's fees to prevailing employees when such an award is warranted in the interest of justice, including any case in which the agency engaged in a prohibited personnel practice or any case in which the agency's action was clearly without merit. While title II of this bill also amends the Back Pay Act to permit the award of attorney's fees in cases where back pay is also awarded, no provision is made for cases where the grievant prevails but no back pay is awarded. This paragraph permits awards in such cases.

Section 1107(c) provides that the Department must comply with such remedial orders unless it seeks judicial review as provided in section 1110. To assure administrative finality, only judicial review is permitted.

Section 1107(d) provides that the Grievance Board may recommend to the Secretary, rather than order, remedial action relating to the promotion or assignment of the grievant, other remedial action not provided for in section 1107, or appropriate disciplinary action. The Secretary may within 30 days modify or reject a Grievance Board recommendation upon a determination that implementation of the Board's recommendation would be contrary to law or would adversely affect the foreign policy or security of the United States, but must state the rationale for so doing in writing. In performing this function, however, the Secretary may not communicate ex parte with any persons involved in the Grievance Board proceeding.

*Section 1108—Access to records*

Section 1108 derives in part from section 692 (7) and (8) of the 1946 act.



Section 1108(a), which is new, provides that an agency's denial to a grievant of access to an agency record may be raised by the grievant in connection with the grievance.

Section 1108(b) provides that the Board shall have broad access to any agency record it deems relevant and material to the grievance. Any requested agency record may be withheld only upon certification in writing by the agency head or his or her deputy that disclosure of the record to the Board and the grievant would adversely effect the foreign policy or national security of the United States or that such disclosure is prohibited by law. If such a certification is made, the agency is required to supply to the Board a summary or extract of the record unless the above reasons also preclude a summary or extract.

Section 1108(c) requires the Board to turn over to the grievant relevant and material agency records so obtained.

Section 1108(d) provides that in considering a grievance, the Board may take into account the denial to the grievant or the Board of access to an agency record which the Board determines is or may be relevant and material to the grievance.

Section 1108(c) provides that the grievant shall be permitted access to the record of proceedings and the decision of the Board in the grievance.

#### *Section 1109—Relationship to other remedies*

Section 1109 carries forward section 693 of the 1946 act. It precludes a grievant from seeking relief under these grievance procedures when he or she has begun to seek relief under another provision of law, regulation, or Executive order, other than 5 U.S.C. 1206 relating to the special Counsel of the Merit Systems Protection Board. The grievant will be bound by his or her election to use their grievance procedures or the other procedures. This election of remedies provision modifies the general exclusion of matters subject to another specific statutory hearing procedure under section 1101(b)(4), by providing that a grievant may elect to seek relief under this chapter of a complaint that is also cognizable under chapter 12 of title 5, United States Code.

#### *Section 1110—Judicial review*

Section 1110 carries forward section 694 of the 1946 act. It provides that any aggrieved party may obtain judicial review of a final action of the Secretary or the Grievance Board. Suit may be filed in the district courts of the United States in accordance with chapter 7 of title 5, United States Code. The standard of judicial review is contained in 5 U.S.C. 706.

### **TITLE II—TRANSITION, AMENDMENT TO OTHER LAWS, REPEALS, AND MISCELLANEOUS PROVISIONS**

#### **Chapter 1—Transition**

Chapter 1 governs the transition of Foreign Service personnel on the rolls to the new categories and salary schedules established by Title I of the bill. It provides that personnel who are already obligated to worldwide availability will convert automatically to the Foreign Service Schedule or have the option to join the Senior Foreign Service, depending on their current rank. Personnel not so committed will

convert only after they have undertaken an obligation to serve abroad and the Department has certified that there is a need for their services in the Foreign Service. Those "domestic" personnel who do not convert to one of the new Foreign Service categories will be converted into the Civil Service without loss of salary or grade.

This chapter provides that all conversions will be without loss of salary or grade, and that persons covered by the Foreign Service Retirement and Disability System may elect to continue to participate in that System.

The bill's provisions for conversion of "domestic" Foreign Service personnel to Civil Service status will be deferred with respect to the International Communication Agency (ICA), until July 1, 1981, in view of a preexisting agreement with the labor organization representing the employees who would otherwise be affected immediately.

*Section 2101—Pay and benefits pending conversion*

Section 2101 provides (except with respect to ICA employees within the coverage of section 2104(b)) that members of the Foreign Service eligible for conversion under sections 2102 and 2103 shall receive pay and other benefits as if converted on the effective date of the bill. This is consistent with the fact that virtually all other provisions of the bill will become effective on that date.

*Section 2102—Conversion of the Foreign Service Schedule*

Section 2102 provides authority for the conversion of present members of the Service, including Foreign Service officers, Foreign Service Reserve and Reserve Unlimited officers, and Foreign Service staff officers and employees, to appropriate classes in the new Foreign Service Schedule. To be converted under this section, personnel must be available for assignment abroad. Section 2102(b) provides that personnel who are not available for worldwide assignments within a maximum of 3 years from the effective date of this bill will be converted to the Foreign Service Schedule only if the Secretary certifies that there is need for their services in the Foreign Service. Furthermore, the individual must accept in writing the obligation for worldwide assignment. Otherwise they will be converted to the civil service under section 2104. This section is intended to eliminate the continued presence in the Foreign Service of personnel who serve only in the United States. It is not intended to affect personnel who have served abroad and whose availability for assignment abroad is temporarily interrupted by personal circumstances.

*Section 2103—Conversion to the Senior Foreign Service*

Section 2103 provides generally for conversion into the new Senior Foreign Service. Although the Senior Foreign Service is broadly patterned after the Senior Executive Service, a number of differences have been noted. This section illustrates still another departure from civil service practice. Under the Civil Service Reform Act of 1978, senior employees in domestic positions were given the choice to join, or not to join, the new Senior Executive Service. This bill provides little choice for Senior Foreign Service officers. Either Foreign Service officers at certain levels choose to apply for conversion into the Senior Foreign Service or they must leave the Service within 3 years. This forced conversion is justified both by the "up-and-out" nature of the

Foreign Service and by the fact that, unlike the new Senior Executive Service, members of the Foreign Service are not being asked to convert to an entirely different personnel system. When supergrades were asked to convert to the Senior Executive Service, they were asked to give up all protections of a rank-in-position, tenured system. Those senior officers who will be considering conversion are being asked to switch from a rank-in-person system with some tenure insecurity to another rank-in-person system with slightly greater insecurity. Since the change is less drastic, the employee protections are fewer.

Section 2103(a) provides that worldwide-obligated Foreign Service officers and Reserve officers (with limited and unlimited tenure) serving under appointments at class 2 or higher may elect to enter the Senior Foreign Service within 120 days following the effective date of the bill (October 1, 1980).

Section 2103(b) provides that the Secretary shall grant a limited Senior Foreign Service appointments to a Reserve officer with limited tenure who makes an election under subsection (a). Section 2103(c) provides that the Secretary shall recommend to the President a career appointment in the Senior Foreign Service of a Foreign Service officer or Reserve officer with unlimited tenure who makes such an election.

Section 2103 states an exception for Reserve officers who are not currently available for assignment abroad. Such officers will be allowed to enter the Senior Foreign Service only if the Secretary certifies that there is a need for their services and they affirm in writing their obligation to accept worldwide availability for assignment as a condition of employment. This provision is intended to serve the same purpose as section 2102(b) of the bill.

Under section 2103(e), an officer who does not submit an election to enter the Senior Foreign Service within the 120-day period specified in subsection (a) may still submit a request for a Senior Foreign Service appointment but not later than October 1, 1983. In that event the officer may be appointed to the Senior Foreign Service only in accordance with the conditions specified in section 2103(d) and such other conditions as the Secretary may prescribe in light of the bill's provisions regarding Senior Foreign Service entry in the post-transition phase.

Section 2103(f) provides that an officer who does not elect to enter the Senior Foreign Service (or whose request for entry after the initial 120-day period is denied) must leave the Foreign Service within 3 years after the bill's effective date. The conditions of service for such officers prior to their departure will be governed by the provisions of the bill applicable to the Senior Foreign Service except that they will not be eligible for performance pay or limited extension of their career appointments, and their assignment possibilities will be limited. This section does not apply to officers whose conversion to Senior Foreign Service is prevented by their unavailability for worldwide assignment. Such officers would be converted to the civil service under section 1204 if they wish to remain in Government service.

The committee has received assurances from the Office of Personnel Management that necessary supergrade positions required for the Senior Foreign Service will be transferred to the foreign affairs agencies affected. There will, therefore, be no need for the creation of new supergrade positions.

*Section 2104—Conversion from the Foreign Service*

Section 2104 provides that members of the Service serving in categories subject to conversion to the Foreign Service Schedule or the Senior Foreign Service who are not so converted because they are not available for worldwide assignment or who otherwise do not meet the conditions specified in sections 2102(b) or 2103(d) shall be converted to the civil service in a comparable grade of the General Schedule or to the Senior Executive Service. The purpose of this provision is to convert those current "domestic" members of the Foreign Service to the civil service without loss of salary or grade. The 3-year mandatory conversion period for "domestic" members of the Foreign Service in the International Communication Agency (ICA) will not commence until July 1, 1981, in consideration of a pre-existing collective bargaining agreement with the labor organization representing those personnel.

*Section 2105—Conversion of certain positions in the Department of Agriculture*

Section 2105 provides for certain positions in the Foreign Agricultural Service to be designated by the Secretary of Agriculture to be occupied by career members of the Foreign Service. A person currently serving in such a position may elect to be converted to the Foreign Service. If such person declines conversion, he or she will nonetheless be deemed a member of the Foreign Service for purposes of allowances, differentials, and similar benefits as determined by the Secretary of Agriculture so long as he or she continues to hold the designated position.

*Section 2106—Preservation of status and benefits*

Section 2106 provides specific statutory authority governing conversions made pursuant to this chapter. Conversions shall be accomplished in a manner which preserves the status and benefits that members of the Service enjoyed prior to conversion. Section 2106(a)(1) provides that a conversion to a new personnel system, category, or salary schedule shall be to a corresponding class or grade without a reduction in salary.

Section 2106(b)(1) permits those who are converted to the civil service to elect to remain participants in the Foreign Service Retirement and Disability System, so long as they continue to serve in an agency authorized to use the authorities of this bill. Such an individual could choose between the Civil Service System's provisions for a higher maximum annuity and exemption from mandatory retirement or the Foreign Service System's provisions for earlier retirement and somewhat more liberal computation formula.

Section 2106(b)(2) insures the right of certain Foreign Service Reserve personnel (Foreign Service Reserve Unlimited candidates) who were formerly career members of the Staff Corps and thus participants in the Foreign Service Retirement and Disability System to elect to participate in that system if converted to the civil service under section 1204 of this bill. These individuals, who converted to the FSRU program as encouraged by departmental policy, had no choice except to become FSR's for at least 3 years before achieving career FSRU

status, by virtue of a court order. During this period, they had to be transferred to the Civil Service Retirement and Disability System, since FSR's cannot be covered by the Foreign Service Retirement and Disability System.

Section 2106(c) provides that members shall be converted to a type of appointment which corresponds as closely as possible in tenure to the type of appointment from which they were converted. For example, individuals serving as FSRU's will be converted to career appointments in the competitive service.

Section 2106(d) provides that persons with appointments in the Service or other offices or positions continued by the bill may continue to serve and need not be reappointed by virtue of the enactment of the bill or the repeal of the 1946 act. This includes, for example, current chiefs of mission and current members of the Foreign Service Grievance Board, but Foreign Service officers converted to the Senior Foreign Service will be appointed by the President.

Finally, section 2106(e) defers for 10 years, or until they become eligible for an immediate annuity, whichever is shorter, the application of the bill's provisions for retirement based on relative performance with respect to current personnel who are not now subject to such retirement (cf. section 608).

#### *Section 2107—Regulations*

Section 2107 provides that the Secretary, under the direction of the President, shall prescribe regulations to implement this transition chapter. This section contemplates two sets of regulations. Each agency head (the "Secretary") will prescribe implementing regulations for his or her agency. The Secretary of State will also prescribe general regulations which will apply uniformly to all agencies (cf. section 2108).

#### *Section 2108—Authority of other agencies*

Section 2108 provides that other agency heads shall implement chapter 1 of title II in accordance with regulations prescribed by the Secretary of State under section 2107 and in consultation with the Secretary. This will insure that the transition will be implemented in a uniform and consistent manner while leaving each agency head free to determine the implementing details for his or her agency under the authority of section 2107.

### Chapter 2—Amendments to Other Laws

Chapter 2 contains amendments to statutes concerning the foreign affairs agencies required by title I of the bill. These include the relocation of provisions in the 1946 act which deal with subjects other than Foreign Service personnel, such as the State Department's authority to accept gifts. This chapter also contains conforming amendments to the authority of other agency heads to utilize the Foreign Service personnel system, extends to the Foreign Service provisions of existing law regarding attorneys' fees in unfair labor practice and grievance cases, and conforms accumulation of Senior Foreign Service annual leave with the exemption for Senior Executive Service personnel. In addition, it modifies the basic authority

of the Department to allow payment of additional subsistence expenses of security officers on authorized protective missions, and members of the Foreign Service and the Department generally when required to spend extraordinary amounts of time in travel status. This chapter also contains necessary conforming amendments to other laws relating to Foreign Service personnel, *e.g.*, the Peace Corps Act and the Arms Control and Disarmament Act.

*Section 2201—Basic authorities of the Department of State*

Section 2201(a) adds nine new sections to the State Department's Basic Authorities Act of 1956 (Public Law 84-855, 70 Stat. 890). The act contains a number of statutory authorities which apply to the Department of State as an agency. Section 2201 would place in that act (hereafter referred to as "the Basic Authority") a number of authorities now found in the Foreign Service Act of 1946 or in annual State Department authorization acts:

(1) *Gifts* (new section 25).—Section 1021 of the Foreign Service Act of 1946 contains the authority of the Secretary of State, and the Directors of the International Communication Agency and the U.S. International Development Cooperation Agency to accept and use gifts for the purposes of their respective agencies, including the Foreign Service. Section 25 is materially identical to current law, although it has been redrafted for purposes of clarity.

(2) *Authorization to retain attorneys* (new section 26).—Section 1031 of the Foreign Service Act of 1946 provides that the Secretary of State may authorize a principal officer of the Foreign Service regardless of parent agency to procure legal services. This authority will also be available to ICA and USIDCA.

(3) *Employment opportunities for family members* (new section 27).—Section 401(a) of the Foreign Relations Authorization Act, Fiscal Year 1979 (Public Law 95-426, 92 Stat. 977) and section 413(c) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105, 91 Stat. 856) contain provisions designed to facilitate the employment of members of the families of U.S. Government employees abroad. Although related, those provisions are not incorporated in sections 311 or 408 of this bill because they do not pertain to appointment to the Foreign Service or compensation in the Foreign Service. The provisions involved are a direction to seek to negotiate reciprocal agreements to facilitate employment of family members abroad, unless to do so would violate a local law or damage the interests of the United States.

(4) *Use of vehicles* (new section 28). Section 914 of the Foreign Service Act of 1946 provides that the Secretary of State may authorize a principal officer to approve the use of Government-owned or leased vehicles for transportation at post when public transportation is unsafe or unavailable. New section 28 contains the same authority and is intended to continue the existing exception to 31 U.S.C. 638a. The section also permits such use when it is advantageous to the Government. The approval could extend to all agencies under the authority of the chief of mission

or only to certain agencies operating under special conditions (for example, a communications facility located outside the foreign capital in a hazardous area). "Advantage" to the Government includes, for example, situations where it is less costly to provide transportation than to pay the cost of shipping privately owned vehicles, where some U.S. citizen employees or members of their families are not permitted to drive by local law or custom, or where some are not permitted to import a privately owned vehicle by the local government or are effectively prevented from doing so by reason of import duties in excess of the purchase value of the privately owned vehicle. It is expected that when the Government elects to provide transportation to employees, regulations will prohibit the employees concerned from importing vehicles at Government expense.

(5) *Educational facilities* (new section 29).—This section is identical to section 1081 of the Foreign Service Act of 1946 which authorizes the Secretary of State to establish, operate, and maintain abroad primary schools and school dormitories and related educational facilities for primary and secondary schools, as well as to make grants for such purposes and otherwise to provide for such facilities.

(6) *Malpractice protection* (new section 30).—Section 1091 of the Foreign Service Act of 1946 provides that the exclusive remedy for malpractice claims against State Department medical personnel arising out of health services furnished in the course of official duties shall be a tort claim against the United States. It also contains the related procedural provisions for holding such medical personnel harmless through insurance or otherwise from personal liability. New section 30 is a restatement of present law.

(7) *Post employee services* (new section 31).—This section contains authorities for the operation of, and assistance to, employee-operated commissary and other services and facilities. This authority is now found in title IX, part C, of the Foreign Service Act of 1946. Section 921 of the 1946 act is the substantive provision which corresponds to new section 31 of the Basic Authority.

(8) *Per diem for security officers and others* (new section 32).—This section authorizes the Secretary of State to pay subsistence expenses of Department security officers and other members of the Service and Department employees who are required to be on protracted travel status, without regard to limits on per diem set by 5 U.S.C. 5702. This section is derived from section 911 (12) of the 1946 act.

This provision gives the Secretary of State authority (equivalent to that of the Secretary of the Treasury vis-a-vis Secret Service agents) with respect to security officers of the Department assigned to protective security missions, and with respect to other employees on protracted travel status. This authority enables the Secretary to pay extraordinary subsistence expenses to security officers of the Department (including agents on detail to the Department by agreement of the heads of their agencies) assigned to protect foreign visitors to the United States. Security officers assigned such missions are often required to stay in the very ex-

pensive hotels usually used by visiting dignitaries. They cannot pay their out-of-pocket subsistence expenses on the \$50-per-day limitation imposed by 5 U.S.C. 5702, so this section authorizes the Secretary to disregard that limitation.

(9) *Title* (new section 33).—This section provides that the provisions of the 1956 act, as amended may be cited as the "State Department Basic Authorities Act of 1956."

Section 2201(b) changes an internal reference to the 1946 act in the working capital fund provisions of the State Department's Basic Authority to conform with this bill.

*Sections 2202, 2203, and 2204—Conforming amendments*

Sections 2202, 2203, and 2204 conform to the appropriate authorities and citations of this bill various references to the 1946 act contained in the Peace Corps Act (22 U.S.C. 2501 et seq.), the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), and the Arms Control and Disarmament Act (22 U.S.C. 2551 et seq.), respectively. Section 2401 of the bill includes a general saving provision that references in other laws to the 1946 act shall be considered references to corresponding provisions of the new bill, but it is desirable to amend specifically those provisions of these laws which are directly related to the personnel authorities of the three agencies concerned. The conforming amendments are as follow:

*Section 2202.*—Section 5 (f) (1) and (h), 7(a), 13(b), 14(b), and 15(a) of the Peace Corps Act (22 U.S.C. 2504, 2506, 2512, 2513, and 2514);

*Section 2203.*—Sections 625(d), 629(b), 631(b), and 631(c) of the Foreign Assistance Act (22 U.S.C. 2385, 2389, and 2391); and

*Section 2204.*—Sections 42 and 48 of the Arms Control and Disarmament Act (22 U.S.C. 2582 and 2588).

Section 2202 provides that the President may use Foreign Service personnel authorities for those employees of the Peace Corps who are available for worldwide assignment and who occupy positions requiring worldwide availability.

Section 2204 also continues the current authority of the Arms Control and Disarmament Agency for a single renewal or extension of a limited Foreign Service appointment. This exceptional authority will allow that small agency to staff effectively those overseas positions requiring continuity over periods exceeding five years.

*Section 2205—Repealed provisions*

Section 2205 repeals a number of provisions of laws which will be superseded, or made obsolete or redundant by the enactment of the bill.

All the provisions of the Foreign Service Act of 1946, as amended, are either replaced by title I of the bill, moved into the Basic Authority of the Department of State by section 2201, or considered obsolete or duplicative of other provisions of law. Accordingly, the 1946 act is repealed in its entirety.

Two provisions of the Foreign Relations Authorization Act, Fiscal Year 1979 (Public Law 95-426), are repealed:

—Section 401, which pertains to employment of family members overseas, and which has been incorporated in sections 31 and 408 of this bill and in section 27 of the Basic Authority under section 2201(a) of the bill; and



—Section 413, which requires a report to Congress on review of Foreign Service personnel requirements and compensation by January 20, 1979. The report was submitted at that time.

Section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95-105), is repealed. That section, which relates to employment of Foreign Service spouses, is covered by the provisions of sections 311, 408, 703(d), 704, and 705(b).

The following provisions of the Foreign Relations Act, Fiscal Year 1977 (Public Law 94-350), are repealed:

—Section 117, which required a report which has been submitted to Congress on proliferation of personnel categories within the State Department and the U.S. Information Agency (now ICA) by a date 180 days from enactment;

—Section 120, which expressed the sense of Congress that career Foreign Service personnel should occupy a greater number of ambassadorial positions, has been incorporated in substance in section 304(a)(2) of the bill; and

—Section 522, which provided for conversion into the Foreign Service Retirement System of Foreign Service staff officers and employees with unlimited appointments, has accomplished its purpose.

Section 6 of the Department of State Appropriations Authorization Act of 1973 is repealed. That section required a report on political contributions by nominees for ambassador or minister and is incorporated in substance in section 304(b)(2) of the bill.

The Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps, Public Law 90-494, 82 Stat. 810 (1968), is repealed. Some provisions of that act are inconsistent with chapters 3 and 4 of title I of the bill which eliminate staff and reserve personnel categories and provide for a Senior Foreign Service. Other provisions are carried forward by specific provisions of this bill, such as sections 202 and 203 relative to compatibility, and section 301(c) making veterans' status an affirmative factor in appointment.

Section 104(c) of the Mutual Education and Cultural Exchange Act of 1961 (22 U.S.C. 2454(c)), providing that the Secretary of State may employ or assign Foreign Service Reserve, staff, or alien employees to perform functions under the Cultural Exchange Act, is repealed as obsolete.

Certain provisions of the Foreign Assistance Act are not conformed by section 2203 of the bill, but are repealed. Section 625(d)(2), which authorizes utilization of the authorities of the Foreign Service Act, becomes unnecessary because section 202 of the bill makes clear that the Director of the IDCA may utilize the new Foreign Service personnel authorities in the same manner in IDCA as the Secretary of State does for the Department of State.

Section 625(e), which provides authority for a selection-out system, becomes unnecessary because the Director of IDCA, like the Secretary of State and the Director of ICA, has this authority under sections 607 and 608 of the bill;

Section 625(g), which provides for application of foreign language competence principles, is eliminated, but is still applicable to IDCA under section 702 of the bill; and

Section 625(k), which provides for staged conversion of AID employees into the Foreign Service Retirement System, will be repealed effective January 1, 1982, at which time the process will have been completed.

Section 7(b) of the Peace Corps Act, which authorizes selection-out for Peace Corps staffs, is eliminated as unnecessary because similar authorities under section 607 through 609 of the bill will be available to the Peace Corps under section 202 of the bill.

Sections 14 and 16 of an Act to provide certain basic authority for the Department of State (22 U.S.C. 2679a, 2680a) are repealed, having been substantially reenacted as sections 412 and 207, respectively, of the bill.

Section 124(a) (2) of the International Development and Food Assistance Act of 1977, which provides authority for the performance by the Inspector General of the Foreign Service of the functions of the former Inspector General, Foreign Assistance, is superseded by section 209 of the bill.

A series of provisions making adjustments to the annuities provided under the Foreign Service retirement and disability system are repealed since they have been fully implemented and will be superseded by the present bill.

*Section 2206—Other conforming amendments*

Section 2206 lists a number of technical amendments to the legislation that substitute references to this bill in place of parallel references to the 1946 act.

*Section 2207—Retirement for Binational Center Employees*

This section, offered as an amendment by Senator Pell, corrects an inequity in the application by the International Communication Agency (ICA) of a 1974 court decision.

In May 1974 litigation concerning whether a Binational Center grantee is in fact a Federal employee resulted in a Federal Court decision that such grantees are entitled to retirement credit for their service as such. However, in at least one instance the Civil Service has failed to recompute the retirement credit of a grantee accordingly. The purpose of this amendment is to make clear that the Court decision should result in an appropriate recomputation of the annuity of any person who served for at least 5 years as a Binational Center grantee and who has not had such service credited to his Civil Service retirement annuity. The ICA estimates that 50 people may benefit under this section.

**Chapter 3—Amendments to Title 5, United States Code**

This chapter contains a number of amendments to laws applicable to the Government as a whole as they relate to the Foreign Service. These changes include explicit reemployment rights for employees of any agency who accept limited appointment in the Foreign Service, provision of a statutory salary base for ambassadors at large, author-

ity to pay advance pay upon any departure from an overseas post when the Secretary determines this to be in the national interest (rather than as currently, only when an evacuation is ordered), authority to pay a separate maintenance allowance at the request of a member of the Service, rather than, as presently, only for the convenience of the Government. For posts where a special incentive for service is determined to be necessary due to especially adverse conditions, the post differential could be as high as 40 percent of base pay, rather than the current 25 percent ceiling. A separate new allowance authority would allow a danger pay allowance of up to 25 percent of base pay, at posts where civil insurrection, civil war, terrorism, or wartime conditions threaten physical harm or imminent danger.

*Section 2301—Reemployment rights*

Section 2301 provides for reemployment with the employee's former agency following expiration of a limited appointment in the Foreign Service. This section is identical to section 528 of the 1946 act.

*Section 2302—Salary for ambassadors at large*

Section 2302 adds the category of ambassadors at large to the officers who are authorized salary at Executive Level II under 5 U.S.C. 5313. Under the Foreign Service Act of 1946, ambassadors at large are classified for salary purposes at class 1 of the four classes of chief of mission under section 411 of the 1946 act, which corresponds to Executive Level II. Section 103(2) of the bill, however, identifies ambassadors at large as being separate from chiefs of mission. Accordingly, section 2302 provides authority for the continuation of current practice.

*Section 2303—Advances of pay incident to departure from posts abroad*

Section 2303 (a) and (b) broadens 5 U.S.C. 5522 (a) and (b) by allowing an advance of pay at rates currently authorized whenever an employee is officially authorized or ordered to leave a post abroad due to unsettled conditions, whether or not an actual evacuation is ordered. The remaining changes in 5 U.S.C. 5523 and 37 U.S.C. 405a(a) conform those sections to the changes in 5 U.S.C. 5522. The committee believes that it is in the interests of both the Government and the employee to provide more flexible requirements in this area. On the one hand, the Government can more easily order departures from posts abroad of nonessential personnel when a crisis occurs without ordering a full-scale evacuation. At the same time, those employees or dependents who are ordered to leave will be able to procure an advance on salary, allowances, or differentials to take care of emergency expenses and will thus not have to incur indebtedness in order to comply with a Government order.

*Section 2304—Premium pay*

Section 2304 makes members of the Senior Foreign Service ineligible for premium pay under subchapter V of chapter 55 of title 5, United States Code.

*Section 2305—Attorneys fees in backpay cases*

Section 2305 amends 5 U.S.C. 5596(b), which was amended by the Civil Service Reform Act to permit the award of attorneys' fees for

civil service employees in unfair labor practice and grievance cases. Section 2305 extends the application of those provisions to comparable situations involving members of the Foreign Service in proceedings under the bill which correspond to the civil service proceedings already specified in 5 U.S.C. 5596(b).

*Section 2306—Separate maintenance allowance*

Section 2306 broadens slightly the circumstances in which a separate maintenance allowance may be paid to an employee stationed abroad who is separated from his or her family because of dangerous or unhealthful conditions at the employee's post. The amendment permits such allowances to be paid upon request of the employee and will enable the agencies to be more responsive to employee and family needs. The separate maintenance allowance is intended to assist in offsetting the additional expenses incurred by an employee who maintains a separate household for his or her family. Under current legislation and regulations, this allowance is granted to an employee whenever the head of an agency determines that the employee is compelled to maintain any or all dependents elsewhere than at his or her post of assignment due to one or more of the following conditions: Dangerous living conditions, notably unhealthful conditions, excessively adverse conditions, or for the convenience of the Government.

Dangerous living conditions are those which warrant, or have resulted in, the evacuation or exclusion of dependents from the area on account of danger to life or property, for such reasons as war, riots, earthquakes, or epidemics. Notably unhealthful conditions are those which have produced a ruling by reliable medical authority that no dependents, or only those dependents meeting certain age or other qualifications, should accompany the Foreign Service member to, or remain at, the post.

Excessively adverse conditions include the following: (1) Climate, altitude, unhealthful, or other conditions peculiar to the post which have seriously aggravated, or are likely seriously to aggravate, an illness or other conditions of health of a dependent; (2) lack of medical or hospital facilities in the area, as determined by reliable medical authority, to provide adequate treatment required for an illness or other condition of health of a dependent; and (3) chronic lack of housing at the post which has forced the agency to adopt a policy of withholding transportation of dependents to the post until housing for them can be obtained.

It may be convenient to the Government to provide a separate maintenance allowance where housing facilities at post are subject to control by U.S. military authorities, a foreign government, or some other authority, and are not available for use by the dependent. A similar situation occurs where, in the interests of the U.S. Government, the agency has withheld or terminated authority for the dependent's transportation to the post, or has recommended that the dependent leave the post of assignment.

*Section 2307—Education allowance*

Section 2307 eliminates a distinction which allowed two annual round trips for dependents of State Department, ICA, AID, CIA,

NSA, and Department of Justice employees, but only one total round trip to dependents of other U.S. Government employees during their undergraduate college education. Now two annual round trips for the purposes of undergraduate college education will be allowed as part of the educational allowance for each dependent of an employee stationed overseas. This change merely extends this allowance uniformly to all eligible Government employees stationed overseas.

*Section 2308—Posts requiring special incentives*

Section 2308 provides new authority to pay a special incentive differential of 15 percent as a recruitment and retention incentive to Foreign Service members assigned to a limited number of posts. This section provides the agencies with an additional tool which may be used, depending on budgetary considerations, to recruit members to serve in especially difficult locations overseas.

*Section 2309—Advances of pay*

Section 2309(a) adds a new section to title 5 of the United States Code. New section 5927 will allow up to 3 months' advance pay to an employee being assigned to a post in a foreign area. Relocation expenses and the high costs of settling into a new home overseas place significant burdens on Foreign Service members and their families. This provision will provide an advance of pay to ease the transition and to insure that funds are available in emergencies. Section 2309(b) amends the analysis for chapter 59 of title 5 to reflect the addition of new section 5927.

*Section 2310—Danger pay allowance*

Section 2310 adds a new section 5928 to title 5, United States Code, providing a danger pay allowance to employees serving in a foreign area where there is imminent danger to the life or safety of Federal employees serving in the area. This allowance is limited to 25 percent of basic pay. It will generally be granted to employees, including chiefs of mission, who are required to remain at a post after dependents, or nonessential personnel, or both have been evacuated or to employees who are serving at posts at which dependents are not permitted because of unsettled conditions. A danger pay allowance will be granted during the period when the threat of physical harm or imminent danger to health or well-being exists.

*Section 2311—Leave*

Section 2311(a) which is derived from section 936 of the 1946 act, includes within the annual and sick leave provisions in subchapter 1 of chapter 63 of title 5, United States Code, members of the Senior Foreign Service and members of the Foreign Service commissioned under section 312 of this bill as diplomatic or consular officers of both, with the exception of members serving as chiefs of mission or in a position in the Department of State requiring appointment by and with the advice and consent of the Senate.

Section 2311(b) authorizes members of the Senior Foreign Service, similarly to members of the Senior Executive Service, to carry over leave balances in excess of those permitted by 5 U.S.C. 6305 for employees generally.

*Section 2312—Retirement credit for imprisoned foreign nationals*

Section 2312 amends 5 U.S.C. 8332(b) to provide that periods of imprisonment of a foreign national employee compensated under section 410 of the bill shall also be considered creditable service for purposes of Civil Service Retirement and Disability System benefits if the foreign national was covered by the System while employed by the United States and if he or she qualifies for an annuity on the basis of service other than the period of imprisonment. This section is identical to section 444(c)(1) of the 1946 act.

*Section 2313—Conforming amendments to title 5*

Section 2313 makes a number of conforming amendments to title 5 of the United States Code, replacing references to the 1946 act with references to parallel provisions of the bill.

*Section 2314—Retirement credit for "Radio" service*

Section 2314, offered as an amendment by Senator Pell, provides Federal retirement credit to (a) employees who served with Radio Free Europe, Radio Liberty, and Radio Free Asia during years when those organizations were secretly funded by the CIA, and (b) employees who served with the Armed Forces Network, Europe at a time when such employees were not entitled to such retirement credit. Approximately 50 of these employees are now working for the U.S. Government, most of them for the Voice of America, and this provision will increase the annuity of each of these Government employees upon retirement. While the precise cost to the U.S. Government of implementing this provision will depend upon future salaries and career decisions of the affected employees, it has been estimated by the American Federation of Government Employees, which favors this section, that the annual cost will be about \$100,000.

Chapter 4—Saving Provisions, Congressional Oversight, and  
Effective Date

Chapter 4 provides that actions taken under the authority of the Foreign Service Act of 1946 or any other law repealed, modified, or affected by the new act shall continue in full force unless modified or revoked by current authority. It requires annual reports on steps taken to insure maximum compatibility among agencies employing the Foreign Service personnel system, on conversion of individuals under the act, and concerning the upper and lower limits planned by each agency for recruitment, advancement and retention of members of the Service, for each of the five succeeding years. Finally, it provides that the effective date of the new act will be October 1, 1980, with certain limited exceptions.

Section 2401 preserves all actions taken under the 1946 act or any other act repealed, modified, or affected by this until modified, revoked, or superseded. It also insures that the enactment of this bill does not adversely affect benefits conferred by the provisions of law amended or repealed by this bill [e.g., the annuity increases provided by the acts repealed by section 2305(12)–(16)]. The section also provides that references to superseded laws shall be considered to include references to corresponding provisions of the bill. It is similar to section 1135 of the 1946 act.

*Section 2402—Congressional oversight of implementation*

Section 2402 requires a report to the Congress by the Secretary of State within 15 months after the bill's effective date. The report is to describe steps taken in furtherance of the objective of maximum compatibility among agencies authorized to use the Foreign Service personnel system, and should include the Secretary's recommendations on further steps in this regard. This section also requires the Secretary to keep the Congress informed on a continuing basis of progress made in pursuit of this objective. Continuing reports are also required concerning projected ranges of appointment, promotion, and attrition in the Service. On all these matters, the Secretary is instructed to consult with the exclusive representative, if any, of the members of the Foreign Service and to include in the report the views of each exclusive representative. Since the required report must describe implementation of this legislation by all agencies utilizing the Foreign Service personnel system, the committee expects that the Secretary of State accordingly will consult with, and receive the views of the agency heads.

*Section 2403—Effective date*

Section 2403 states that the bill will become effective on October 1, 1980, except that chapter 8 will become effective on the later of October 1, 1980, or 90 days from the date of enactment. Rights of former spouses to a share of a participant's annuity under section 814(a) will apply to individuals who become former spouses of a member who separates from the service after chapter 8 of title I becomes effective. A former spouse may receive a survivor annuity under section 814(b) in respect of a participant or former participant who dies after such effective date.

Regulations to carry out the bill may be prescribed before October 1, 1980, but will not become effective until that date. With respect to Foreign Service promotion cycles, which do not necessarily run on a calendar or fiscal year basis, the committee intends that actions may be taken after October 1, 1980, which are based on any current evaluation cycle as if this bill had been in effect at the beginning of that cycle. The committee expects, however, that adequate and effective notice will have been provided to affected employees at the beginning of the cycle. This will permit, for example, the grant of performance pay within a few months of enactment of this bill, while still providing an adequate evaluation period.

CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

FOREIGN SERVICE ACT OF 1946

[AN ACT To improve, strengthen, and expand the Foreign Service of the United States and to consolidate and revise the laws relating to its administration.

*[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

[TITLE I—SHORT TITLE, OBJECTIVES, AND  
DEFINITIONS

[PART A—SHORT TITLE

[SEC. 101. Titles I to X, inclusive, of this Act may be cited as the  
“Foreign Service Act of 1946.”

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**[PART B—OBJECTIVES**

**[SEC. 111.** The Congress hereby declares that the objectives of this Act are to develop and strengthen the Foreign Service of the United States so as—

**[(1)** to enable the Foreign Service effectively to serve abroad the interests of the United States;

**[(2)** to insure that the officers and employees of the Foreign Service are broadly representative of the American people and are aware of and fully informed in respect to current trends in American life;

**[(3)** to enable the Foreign Service adequately to fulfill the functions devolving on it by reason of the transfer to the Department of State of functions heretofore performed by other Government agencies;

**[(4)** to provide improvements in the recruitment and training of the personnel of the Foreign Service;

**[(5)** to provide that promotions leading to positions of authority and responsibility shall be on the basis of merit and to insure the selection on an impartial basis of outstanding persons for such positions;

**[(6)** to provide for the temporary appointment or assignment to the Foreign Service of representative and outstanding citizens of the United States possessing special skills and abilities;

**[(7)** to provide salaries, allowances, and benefits that will permit the Foreign Service to draw its personnel from all walks of American life and to appoint persons to the highest positions in the Service solely on the basis of their demonstrated ability;

**[(8)** to provide a flexible and comprehensive framework for the direction of the Foreign Service in accordance with modern practices in public administration; and

**[(9)** to codify into one Act all provisions of law relating to the administration of the Foreign Service.

**[PART C—DEFINITIONS**

**[SEC. 121.** When used in this Act, the term—

**[(1)** "Service" means the Foreign Service of the United States;

**[(2)** "Secretary" means the Secretary of State;

**[(3)** "Department" means the Department of State;

**[(4)** "Government agency" means any executive department, board, bureau, commission, or other agency in the executive branch of the Federal Government, or any corporation wholly owned (either directly or through one or more corporations) by the United States;

**[(5)** "Government" means the Government of the United States of America;

**[(6)** "Continental United States" means the States and the District of Columbia;

**[(7)** "Abroad" means all areas not included in the continental United States as defined in paragraph (6) of this section;

**[(8)** "Principal officer" means the officer in charge of an embassy, legation, or other diplomatic mission or of a consulate general, consulate, or vice consulate of the United States; and

[(9) "Chief of mission" means a principal officer appointed by the President, by and with the advice and consent of the Senate, to be in charge of an embassy or legation or other diplomatic mission of the United States, or any person assigned under the terms of this Act to be minister resident, chargé d'affaires, commissioner, diplomatic agent, or the head of a United States office abroad which is designated by the Secretary as having a purpose diplomatic in nature.

## **[TITLE II—GOVERNING BODIES FOR THE DIRECTION OF THE SERVICE**

### **[PART A—OFFICERS**

#### **[DIRECTOR GENERAL**

[SEC. 201. The Service shall be administered by a Director General of the Foreign Service, hereinafter referred to as the Director General, who shall be appointed by the Secretary from among Foreign Service officers in the class of career minister or in class 1. Under the general supervision of the Secretary and the Assistant Secretary of the State in charge of the administration of the Department, the Director General shall, in addition to administering the Service and performing the duties specifically vested in him by this or any other Act, coordinate the activities of the Service with the needs of the Department and of other Government agencies and direct the performance by officers and employees of the Service of the duties imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party.

### **[PART B—BOARDS**

#### **[BOARD OF THE FOREIGN SERVICE**

[SEC. 211. (a) The Board of the Foreign Service shall be composed of the Assistant Secretary of State in charge of the administration of the Department, who shall be Chairman; two other Assistant Secretaries of State, designated by the Secretary to serve on the Board; the Director General; and one representative each, occupying positions with comparable responsibilities, from the Departments of Agriculture, Commerce, and Labor, designated, respectively, by the heads of such departments. The Secretary may request the head of any other Government department to designate a representative, occupying a position with comparable responsibilities, to attend meetings of the Board whenever matters affecting the interest of such department are under consideration.

[(b) The Board of the Foreign Service shall make recommendations to the Secretary concerning the functions of the Service; the policies and procedures to govern the selection, assignment, rating, and promotion of Foreign Service Officers; and the policies and procedures to govern the administration and personnel management of the Service; and shall perform such other duties as are vested in it by other sections of this Act or by the terms of any other Act.

**[THE BOARD OF EXAMINERS FOR THE FOREIGN SERVICE]**

**[SEC. 212. (a)** The Board of Examiners for the Foreign Service shall, in accordance with regulations prescribed by the Secretary and under the general supervision of the Board of the Foreign Service, provide for and supervise the conduct of such examinations as may be given to candidates for appointment as Foreign Service officers in accordance with the provisions of sections 516 and 517 or to any other person to whom an examination for admission to the Service shall be given in accordance with the provisions of this or any other Act or any regulations issued pursuant thereto, and provide for such procedures as may be necessary to determine the loyalty of such persons to the United States and their attachment to the principles of the Constitution.

**[(b)** The membership of the Board of Examiners for the Foreign Service, not more than half of which shall consist of Foreign Service officers, shall be constituted in accordance with regulations prescribed by the Secretary.]

**[TITLE III—DUTIES]**

**[PART A—GENERAL DUTIES]**

**[COMPLIANCE WITH TERMS OF STATUTES, INTERNATIONAL AGREEMENTS AND EXECUTIVE ORDERS]**

**[SEC. 301.** Officers and employees of the Service shall, under the direction of the Secretary, represent abroad the interests of the United States and shall perform the duties and comply with the obligations resulting from the nature of their appointments or assignments or imposed on them by the terms of any law or by any order or regulation issued pursuant to law or by any international agreement to which the United States is a party.

**[DUTIES FOR WHICH REGULATIONS MAY BE PRESCRIBED]**

**[SEC. 302.** The Secretary shall, except in an instance where the authority is specifically vested in the President, have authority to prescribe regulations not inconsistent with the Constitution and the laws of the United States in relation to the duties, functions, and obligations of officers and employees of the Service and the administration of the Service.

**[DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS]**

**[SEC. 303.** In cases where authority to prescribe regulations relating to the Service or the duties and obligations of officers and employees of the Service is specifically vested in the President by the terms of this or any other Act, the President may, nevertheless, authorize the Secretary to prescribe such regulations.

**[PART B—SERVICES FOR GOVERNMENT AGENCIES AND OTHER ESTABLISHMENTS OF THE GOVERNMENT]**

**[SEC. 311.** The officers and employees of the Service shall, under such regulations as the President may prescribe, perform duties and

functions in behalf of any Government agency or any other establishment of the Government requiring their services, including those in the legislative and judicial branches, but the absence of such regulations shall not preclude officers and employees of the Service from acting for and on behalf of any such Government agency or establishment whenever it shall, through the Department, request their services.

#### **[TITLE IV—CATEGORIES AND SALARIES OF PERSONNEL**

##### **[PART A—CATEGORIES OF PERSONNEL**

**[SEC. 401.** The personnel of the Service shall consist of the following categories of officers and employees:

**[(1)** Chiefs of mission, who shall be appointed or assigned in accordance with the provisions of section 501;

**[(2)** Foreign Service officers, who shall be appointed in accordance with section 511, including those serving as chiefs of mission;

**[(3)** Foreign Service Reserve officers, who shall be assigned to the Service on a temporary basis from Government agencies or appointed on a temporary basis from outside the Government in accordance with the provisions of section 522, in order to make available to the Service such specialized skills as may from time to time be required;

**[(4)** Foreign Service staff officers and employees, who shall be appointed in accordance with the provisions of section 531 and who shall include all personnel who are citizens of the United States, not comprehended under paragraphs (1), (2), (3), and (6) of this section, and who shall occupy positions with technical, administrative, fiscal, clerical, or custodial responsibilities;

**[(5)** Alien clerks and employees, who shall be appointed in accordance with the provisions of section 541; and

**[(6)** Consular agents, who shall be appointed in accordance with the provisions of section 551.

##### **[PART B—SALARIES**

###### **[CHIEFS OF MISSION**

**[SEC. 411.** The President shall for salary purposes classify into four classes the positions which are to be occupied by chiefs of mission. The per annum salaries of chiefs of mission within each class shall be at the rate provided by law for the levels of the Federal Executive Salary Schedule as follows: class 1, the rate for level II; class 2, the rate for level III; class 3, the rate for level IV, and class 4, the rate for level V.

###### **[FOREIGN SERVICE OFFICERS**

**[SEC. 412.** There shall be ten classes of Foreign Service officers, including the classes of career ambassador and of career minister. The per annum salary of a career ambassador shall be at the rate provided by law for level IV of the Federal Executive Salary Schedule. The per annum salary of a career minister shall be at the rate provided by

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law for level V of such schedule. The per annum salaries of Foreign Service officers within each of the other classes shall be as follows:

Class 1.....	\$35,617	\$36,804	\$37,624				
Class 2.....	27,935	28,866	29,797	\$30,728	\$31,659	\$32,590	\$33,521
Class 3.....	22,135	22,873	23,611	24,349	25,087	25,825	26,563
Class 4.....	17,761	18,353	18,945	19,537	20,129	20,721	21,313
Class 5.....	14,432	14,913	15,394	15,875	16,356	16,837	17,318
Class 6.....	11,918	12,315	12,712	13,109	13,506	13,903	14,300
Class 7.....	10,014	10,348	10,682	11,016	11,350	11,684	12,018
Class 8.....	8,582	8,868	9,154	9,440	9,726	10,012	10,298

#### **[SALARIES AT WHICH FOREIGN SERVICE OFFICERS MAY BE APPOINTED**

**[SEC. 413.** A person appointed as a Foreign Service officer shall receive basic salary at one of the rates of the class to which he is appointed which the Secretary shall, taking into consideration his age, qualifications, and experience, determine to be appropriate for him to receive.

#### **[FOREIGN SERVICE RESERVE OFFICERS**

**[SEC. 414. (a)** There shall be eight classes of Foreign Service Reserve officers, referred to hereafter as Reserve officers, which classes shall correspond to classes 1 to 8 of Foreign Service officers.

**[(b)** A Reserve officer shall receive salary at any one of the rates provided for the class to which he is appointed or assigned in accordance with the provisions of section 523.

**[(c)** Any person assigned as a Reserve officer from any Government agency shall receive his salary from appropriations provided for the Department during the period of his service as a Reserve officer.

#### **[FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES**

**[SEC. 415. (a)** There shall be ten classes of Foreign staff officers and employees, referred to hereafter as staff officers and employees. The per annum salaries of such staff officers and employees within each class shall be as follows:

Class 1.....	\$22,135	\$22,873	\$23,611	\$24,349	\$25,087	\$25,825	\$26,563	\$27,301	\$28,039	\$28,777
Class 2.....	17,761	18,353	18,945	19,537	20,129	20,731	21,313	21,905	22,497	23,089
Class 3.....	14,432	14,913	15,394	15,875	16,356	16,837	17,318	17,799	18,280	18,761
Class 4.....	11,918	12,315	12,712	13,109	13,506	13,903	14,300	14,697	15,094	15,491
Class 5.....	10,692	11,048	11,404	11,760	12,116	12,472	12,828	13,184	13,540	13,897
Class 6.....	9,587	9,907	10,227	10,547	10,867	11,187	11,507	11,827	12,147	12,461
Class 7.....	8,598	8,885	9,172	9,459	9,746	10,033	10,320	10,607	10,894	11,186
Class 8.....	7,712	7,969	8,226	8,483	8,740	8,997	9,254	9,511	9,768	10,025
Class 9.....	6,915	7,146	7,377	7,608	7,839	8,070	8,301	8,532	8,763	8,995
Class 10.....	6,202	6,409	6,616	6,823	7,030	7,237	7,444	7,651	7,858	8,064

**[(b)** Notwithstanding the provisions of subsection (a) of this section, the Secretary may, under such regulations as he may prescribe, classify positions at levels below class 10, and establish salary rates therefor at lower rates than those prescribed by this section, for Amer-

ican employes recruited abroad who are not available or are not qualified for transfer to another post and who perform duties of a more routine nature than are generally performed at the class 10 level.

**[SALARIES AT WHICH FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES  
MAY BE APPOINTED**

**[SEC. 416. (a)** A person appointed as a staff officer or employee shall receive basic salary at one of the rates of the class to which he is appointed with the Secretary shall, taking into account his qualifications and experience and the needs of the Service, determine to be appropriate for him to receive.

**[(b)** Whenever the Secretary determines that the needs of the Service warrant the appointment of staff officers or employees in a particular occupational group uniformly at a rate above the minimum rate of the applicable class, he may adjust the basic salary of any staff officer or employee in the same class and occupational group who is receiving less than such established rate.

**[SALARIES OF ALIEN CLERKS AND EMPLOYEES**

**[SEC. 417.** The salary or compensation of an alien clerk or employee shall be fixed by the Secretary in accordance with such regulations as he shall prescribe and, as soon as practicable, in accordance with the provisions of section 444. The salary or compensation of an alien clerk or employee fixed on a per annum basis may, notwithstanding the provisions of any other law, be payable on a weekly or biweekly basis. When a one- or two-week pay period of such a clerk or employee begins in one fiscal year and ends in another, the gross amount of the earnings for such pay period may be regarded as a charge against the appropriation or allotment current at the end of such pay period.

**[SALARIES OF CONSULAR AGENTS**

**[SEC. 418.** The salary or compensation of a consular agent shall be fixed by the Secretary in accordance with such regulations as he shall prescribe and, as soon as practicable, in accordance with the provisions of section 445.

**[PART C—SALARIES OF OFFICERS TEMPORARILY IN CHARGE**

**[AS CHARGÉ D'AFFAIRES AD INTERIM**

**[SEC. 421.** For such time as any Foreign Service officer shall be authorized to act as chargé d'affaires ad interim at the post to which he is assigned, he shall receive, in addition to his basic salary as Foreign Service officer, compensation equal to that portion of the difference between such salary and the basic salary provided for the chief of mission as the Secretary may determine to be appropriate.

**[AS OFFICERS IN CHARGE OF CONSULATES GENERAL OR CONSULATES**

**[SEC. 422.** For such time as any Foreign Service officer or any consul or vice consul who is not a Foreign Service officer is temporarily in

charge of a consulate general or consulate during the absence or incapacity of the principal officer, he shall receive, in addition to his basic salary as Foreign Service officer or consul or vice consul, compensation equal to that portion which the Secretary shall determine to be appropriate of the difference between such salary and the basic salary provided for the principal officer, or, if there be none, of the former principal officer.

#### **[PART D—TIME OF RECEIVING SALARY**

##### **CHIEFS OF MISSION**

• **[SEC. 431. (a)** Under such regulations as the Secretary may prescribe, a chief of mission may be entitled to receive salary from the effective date of his appointment to the date marking his return to his place of residence at the conclusion of the period of his official service as chief of mission or upon termination of his service in accordance with the provisions of paragraph (b) of this section, but no chief of mission shall be entitled to receive salary while absent from his post whenever the Secretary shall find that such absence was without authorization or justification. If a chief of mission in one position is appointed as chief of mission in another position, he shall be entitled to receive the salary pertaining to the new position commencing on the effective date of the new appointment.

• **[(b)** The official services of a chief of mission shall not be deemed terminated by the appointment of a successor but shall continue until he has relinquished charge of the mission and for such additional period as may be determined by the Secretary, but in no case shall such additional period exceed fifty days including time spent in transit. During such period the Secretary may require him to render such services as he may deem necessary in the interest of the Government.

**[(c)** During the service of a Foreign Service officer or Reserve officer as chief of mission he shall receive, in addition to his salary as Foreign Service officer or Reserve officer, compensation equal to the difference, if any, between such salary and the salary of the position to which he is appointed or assigned.

##### **[OTHER OFFICERS AND EMPLOYEES**

• **[SEC. 432. (a)** Under such regulations as the Secretary may prescribe, any officer or employee appointed to the Service may be entitled to receive salary from the effective date of his appointment to the date when he shall have returned to his place of residence at the conclusion of the period of his official service, or the termination of time spent on authorized leave, whichever shall be later, but no such officer or employee shall be entitled to receive salary while absent from his post whenever the Secretary shall find that such absence was without authorization or justification.

**[(b)** A Foreign Service officer, appointed during a recess of the Senate, shall be paid salary from the effective date of his appointment until the end of the next session of the Senate, if he has not theretofore been confirmed by the Senate, or until his rejection by the Senate before the end of its next session.

[(c) A Foreign Service officer promoted to a higher class shall receive salary at the rate prescribed in section 412 for the class to which he is promoted from the effective date of his appointment to such class. A Foreign Service officer promoted to a higher class during a recess of the Senate shall receive salary at the rate prescribed for the class to which he is promoted from the effective date of his appointment to such class until the end of the next session. If the Senate should reject or fail to confirm the promotion of such an officer during the session following the date of his promotion, the Foreign Service officer shall, unless he has become liable to separation in accordance with the provisions of sections 633, be automatically reinstated in the class from which he was promoted and receive the salary he was receiving prior to his promotion, such reinstatement to be effective, in the event of rejection of the nomination, from the date of rejection; and in the event of the failure of the Senate to act on the nomination during the session following a promotion, from the termination of that session.

#### [PART E—CLASSIFICATION

##### [CLASSIFICATION OF POSITIONS IN THE FOREIGN SERVICE AND IN THE DEPARTMENT

[SEC. 441. (a) Under such regulations as he may prescribe, and in order to facilitate effective management, the Secretary shall classify all positions in the Service at posts abroad, excluding positions to be occupied by chiefs of mission, and in the case of those occupied by Foreign Service officers, Reserve officers, and staff officers and employees, he shall establish such positions in relation to the classes established by sections 412, 414, and 415, respectively. Positions occupied by alien employees and consular agents, respectively, shall be allocated to such classes as the Secretary may establish by regulation.

[(b) Under such regulations as he may prescribe, the Secretary may, notwithstanding the provisions of the Classification Act of 1949, as amended (5 U.S.C. 5101 and the following), classify positions in or under the Department which he designates as Foreign Service Officer positions to be occupied by officers and employees of the Service, and establish such positions in relation to the classes established by sections 412, 414, and 415.

#### [LOCAL COMPENSATION PLANS

[SEC. 444. (a) (1) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service and for United States citizens employed by the Department abroad who are family members of Government personnel serving in the same country. Such compensation plans shall be based upon prevailing wages rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest. Compensation plans established pursuant to this section may include provision for leave of absence with pay for alien employees in accordance with prevailing law and employment practices in the locality of employment, without regard to section 6310 of title 5, United States Code.



[(2) The Secretary may, under such regulations as he may prescribe, make supplemental payments, out of funds appropriated after the date of enactment of this subparagraph for salaries and expenses, to any civil service annuitant who is a former alien employee of the Service (or in a survivor of a former alien employee of the Service) in order to offset exchange rate losses, if the annuity being paid such annuitant is based on (A) a salary that was fixed in a foreign currency that has appreciated in value in terms of the United States dollar, and (B) service in a country in which (as determined by the Secretary) the average retirement benefits being received by those who have retired from competitive local organizations are superior to the local currency value of civil service annuities plus any other retirement benefits payable to alien employees who have retired during similar time periods and after comparable careers with the United States Government.

[(b) For the purpose of performing functions abroad, other Government agencies and any other establishments of the Government, including those in the legislative and judicial branches, are authorized to administer employment programs for aliens, and for family members of Government personnel serving abroad, in accordance with the applicable provisions of this Act and such regulations as the Secretary may provide.

[(c) (1) The head of any agency of the United States, including any agency of the legislative or judicial branch of the United States, may compensate any current or former alien employee, including an alien employee who worked under a personal services contract, who is or has been imprisoned by a foreign government if the Secretary of State (or, in the case of an alien employee of the Central Intelligence Agency, the Director of Central Intelligence) determines that such imprisonment is the result of the alien's employment by the United States. Such compensation may not exceed an amount that such agency head determines approximates the salary and other benefits to which such employee or former employee would have been entitled had he or she remained employed during the period of such imprisonment, and may be paid under such terms and conditions as the Secretary of State deems appropriate. For purposes of making payments authorized by this subsection, the head of any such agency shall have the same powers with respect to imprisoned alien employees and such former employees as any head of an agency under the provisions of subchapter VII of chapter 55 of title 5, United States Code, to the extent that such powers are consistent with this paragraph. Any period of imprisonment of an alien which is compensable under this subsection shall be considered for purposes of any other employee benefit to be a period of employment by the United States Government, except that a period of imprisonment shall not be creditable—

[(A) for purposes of subchapter III of chapter 83 of title 5, United States Code, unless the individual either—

[(i) was subject to section 8334(a) of such title during the period of his or her Government employment last preceding the imprisonment; or

[(ii) qualifies for annuity benefits under such subchapter III by reason of other service; or

[(B) for purposes of subchapter I of chapter 81 of title 5,

United States Code, unless the individual was employed by the United States Government at the time of his or her imprisonment.

[(2) No compensation or other benefit shall be awarded under paragraph (1) unless a claim therefor is filed within three years after—

[(A) the date of the enactment of this subsection;

[(B) the termination of the period of imprisonment giving rise to the claim; or

[(C) the date of the claimant's first opportunity to file such a claim, as determined by the appropriate agency head; whichever is later.

[(3) The Secretary of State may prescribe regulations governing payments under this subsection for the guidance of all agencies.

[(d) The Secretary of State shall prescribe regulations authorizing the employment abroad, and providing for the compensation, of family members of Government personnel.

#### [(CLASSIFICATION OF CONSULAR AGENTS

[SEC. 445. Upon the basis of the classification provided for in section 441, the Secretary shall, with the advice of the Board of the Foreign Service, from time to time prepare schedules of salaries for classes of positions of consular agents, which classes shall be established by regulation, and shall allocate all such positions to the appropriate classes.

#### [(EXEMPTION FROM THE APPLICATION OF THE CLASSIFICATION ACT

[SEC. 446. Title II of the Act of November 26, 1940, entitled "An Act extending the classified executive Civil Service of the United States" (54 Stat. 1212; 5 U.S.C. 681), is hereby further amended by deleting paragraph (vii) of section 3(d) and by substituting in lieu of the present language of paragraph (vi) of section 3(d) the following language: "Officers or positions of officers and employees of the Foreign Service."

#### [(PART F—ADDITIONAL COMPENSATION

##### [(SPECIAL ALLOWANCES

[SEC. 451. If he finds it to be in the best interests of the Service, the Secretary may, under such conditions as he may determine, pay special allowances, in addition to compensation otherwise authorized, to Foreign Service officers who are required because of the nature of their assignments to perform additional work on a regular basis in substantial excess of normal requirements.

#### [(TITLE V—APPOINTMENTS AND ASSIGNMENTS

##### [(PART A—PRINCIPAL DIPLOMATIC REPRESENTATIVES

##### [(POLICY

[SEC. 500. It is the policy of the Congress that chiefs of mission and Foreign Service officers appointed or assigned to serve the United States in foreign countries shall have, to the maximum practicable

extent, among their qualifications, a useful knowledge of the principal language or dialect of the country in which they are to serve, and knowledge and understanding of the history, the culture, the economic and political institutions, and the interests of such country and its people.

**[APPOINTMENTS]**

**[SEC. 501. (a)** The President shall, by and with the advice and consent of the Senate, appoint ambassadors and ministers, including career ambassadors and career ministers.

**[(b)** The President may, in his discretion, assign any Foreign Service officer to serve as minister resident, charge d'affaires, commissioner, or diplomatic agent for such period as the public interest may require.

**[(c)** On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2, of article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months if the President, before conferring such rank, reports in writing to the Committee on Foreign Relations of the Senate his intent to confer such rank and transmits therewith all materials relating to any potential conflicts of interest relevant to such person.

**[LISTS OF FOREIGN SERVICE OFFICERS QUALIFIED TO BE CAREER MINISTERS OR CHIEFS OF MISSION TO BE FURNISHED TO THE PRESIDENT]**

**[SEC. 502. (a)** The Secretary shall, on the basis of recommendations made by the Board of the Foreign Service, from time to time furnish the President with the names of Foreign Service officers qualified for appointment to the class of career ambassador and class of career minister together with pertinent information about such officers, but no person shall be appointed into the class of career minister who has not been appointed to serve as a chief of mission or appointed or assigned to serve in a position which, in the opinion of the Secretary, is of comparable importance. A list of such positions shall from time to time be published by the Secretary. No person shall be appointed into the class of career ambassador who has not (1) served for at least fifteen years in a position of responsibility in a Government agency, or agencies, including at least three years as a career minister; (2) rendered exceptionally distinguished service to the Government; and (3) met such other requirements as the Secretary shall prescribe.

**[(b)** The Secretary shall also, on the basis of recommendations made by the Board of the Foreign Service, from time to time furnish the President with the names of Foreign Service officers qualified for appointment or assignment as chief of mission, together with pertinent information about such officers, in order to assist the President in selecting qualified candidates for appointment or assignment in such capacity.

**[PART B—FOREIGN SERVICE OFFICERS**

**[APPOINTMENTS**

**[SEC. 511.** The President shall appoint Foreign Service officers by and with the advice and consent of the Senate. All appointments of Foreign Service officers shall be by appointment to a class and not to a particular post.

**[COMMISSIONS**

**[SEC. 512.** Foreign Service officers may be commissioned as diplomatic or consular officers or both and all official acts of such officers while serving under diplomatic or consular commissions shall be performed under their respective commissions as diplomatic or consular officers.

**[LIMITS OF CONSULAR DISTRICTS**

**[SEC. 513.** The Secretary shall define the limits of consular districts.

**[ASSIGNMENTS AND TRANSFERS**

**[SEC. 514.** A Foreign Service officer, commissioned as a diplomatic or consular officer, may be assigned by the Secretary to serve in any diplomatic position other than that of chief of mission or in any consular position, and he may also be assigned to serve in any other capacity in which he is eligible to serve under the terms of this or any other Act. He may be transferred from one post to another by order of the Secretary as the interests of the Service may require.

**[CITIZENSHIP REQUIREMENTS**

**[SEC. 515.** No person shall be eligible for appointment as a Foreign Service officer unless he is a citizen of the United States.

**[ADMISSION TO CLASS 6, 7, OR 8**

**[SEC. 516. (a)** No person shall be eligible for appointment as a Foreign Service officer of class 8 unless he has passed such written, oral, physical, and other examinations as the Board of Examiners for the Foreign Service may prescribe to determine his fitness and aptitude for the work of the Service and has demonstrated his loyalty to the Government of the United States and his attachment to the principles of the Constitution. The Secretary may furnish the President with the names of those persons who have passed such examinations and are eligible for appointment as Foreign Service officers of class 8.

**[ (b)** The Secretary may furnish the President with the names of those persons who have passed such examinations and are eligible for appointment as Foreign Service officers of class 8, whom he recommends for appointment directly to class 7 when, in his opinion, their age, experience, or other qualifications make such an appointment appropriate.

**[ (c)** Foreign Service officer candidates who have passed examinations described in subsection (a) may be appointed by the Secretary, under such regulations as he may prescribe, for a trial period of serv-

ice as Foreign Service Reserve officers of class 7 or 8. Such appointments shall be limited to a maximum of 48 months, but may be extended for up to 12 additional months if the Secretary deems such extension to be in the public interest. Such Reserve officers may receive promotions up to class 6 for satisfactory performance during such trial period. The Secretary shall furnish the President with the names of such Reserve officers who have demonstrated fitness and aptitude for the work of the Service and whom he recommends for appointment as Foreign Service officers in the class corresponding to their Reserve officer class. The Secretary may terminate the services of such Reserve officers at any time under section 638.

**[ADMISSION TO CLASSES 1 TO 7, INCLUSIVE]**

**[SEC. 517.** A person who has not been appointed as a Foreign Service officer in accordance with section 516 of this Act shall not be eligible for appointment as a Foreign Service officer of classes 1 to 7, inclusive, unless he has passed comprehensive mental and physical examinations prescribed by the Board of Examiners for the Foreign Service to determine his fitness and aptitude for the work of the Service; demonstrated his loyalty to the Government of the United States and his attachment to the principles of the Constitution; and rendered at least four years of actual service prior to appointment in a position of responsibility in the service of a Government agency, or agencies, except that, if he has reached the age of thirty-one years, the requirement as to service may be reduced to three years. The Secretary shall furnish the President with the names of those persons who shall have passed such examinations and are eligible for appointment as Foreign Service officers of classes 1 to 7, inclusive. The Secretary shall, taking into consideration the age, qualifications, and experience of each candidate for appointment, recommend the class to which he shall be appointed in accordance with the provisions of this section.

**[ADMISSION TO THE CLASS OF CAREER MINISTER]**

**[SEC. 518.** No person shall be eligible for appointment to the class of career ambassador or career minister who is not a Foreign Service officer.

**[REASSIGNMENT TO FOREIGN SERVICE OF FORMER AMBASSADORS  
AND MINISTERS]**

**[SEC. 519.** If, within three months of the date of the termination of his services as chief of mission and of any period of authorized leave, a Foreign Service officer, or a Foreign Service Reserve officer who is a participant in the Foreign Service Retirement and Disability System, has not again been appointed or assigned as chief of mission or assigned to another position in accordance with this or any other Act, he shall be retired from the Service and receive retirement benefits in accordance with the provisions of section 821.

**[REAPPOINTMENT AND RECALL]**

**[SEC. 520. (a)** The President may, by and with the advice and consent of the Senate, reappoint to the Service, a former Foreign Service

officer who has been separated from the Service. The Secretary shall, taking into consideration the qualifications and experience of each candidate for reappointment and the rank of his contemporaries in the Service, recommend the class to which he shall be reappointed in accordance with the provisions of this section.

[(b) Whenever the Secretary determines it to be in the public interest, any retired officer or employee of the Service may be recalled for active duty on a temporary or limited basis to any appropriate class in his or her former category, except that a retired Foreign Service officer may not be recalled to a class higher than he or she held at the time of retirement unless appointed to the higher class by the President by and with the advice and consent of the Senate.

#### **[PART C—FOREIGN SERVICE RESERVE OFFICERS**

##### **[ESTABLISHMENT OF RESERVE**

[SEC. 521. In accordance with the terms of this Act and under such regulations as the Secretary shall prescribe, there shall be organized and maintained a Foreign Service Reserve, referred to hereafter as the Reserve.

##### **[APPOINTMENTS AND ASSIGNMENTS TO THE RESERVE**

[SEC. 522. Whenever the services of a person who is a citizen of the United States are required by the Service, the Secretary may—

[(1) appoint as a Reserve officer for nonconsecutive periods of not more than five years each, a person not in the employ of the Government whom the Board of the Foreign Service shall deem to have outstanding qualifications;

[(2) assign as a Reserve officer for nonconsecutive periods of not more than five years each a person regularly employed in any Government agency, subject, in the case of an employee of a Government agency other than the Department of State, to the consent of the head of the agency concerned; and

[(3) extend the appointment or assignment of any Reserve officer, or continue the services of any such Reserve officer by reappointment without regard to the provisions of section 527 of this Act, for not more than five additional years if the Secretary deems it to be in the public interest to continue such officer in the Service, except that the assignment of any Reserve officer under paragraph (2) above may not be extended under the provisions of this paragraph without the consent of the head of the agency concerned; except that the authority contained in this paragraph relating to extending the appointment of any Reserve officer, and to continuing the services of any such Reserve officer by reappointment, shall not be applicable to the Department of State and the International Communication Agency.

##### **[APPOINTMENT OR ASSIGNMENT TO A CLASS**

[SEC. 523. A Reserve officer, appointed or assigned to active duty, shall be appointed or assigned to a class and not to a particular post, and such an officer may be assigned to posts and may be transferred

from one post to another by order of the Secretary as the interests of the Service may require. The class to which he shall be appointed or assigned shall depend on his age, qualifications, and experience.

#### **【COMMISSIONS**

【SEC. 524. Whenever the Secretary shall deem it in the interests of the Service that a Reserve officer shall serve in a diplomatic or consular capacity, he may recommend to the President that such officer be commissioned as a diplomatic or consular officer or both. The President may, by and with the advice and consent of the Senate, commission such officer as a diplomatic or consular officer or both, and all official acts of such an officer while serving under a diplomatic or consular commission shall be performed under his commission as a diplomatic or consular officer. In all other cases, appropriate rank and status analogous to that of Foreign Service officers engaged in work of comparable importance shall be provided to permit Reserve officers to carry out their duties effectively.

#### **【BENEFITS**

【SEC. 526. A Reserve officer shall, except as otherwise provided in regulations which the Secretary may prescribe, receive all the allowances, privileges, and benefits which Foreign Service officers are entitled to receive in accordance with the provisions of title IX.

#### **【REAPPOINTMENT OR REASSIGNMENT OF RESERVE OFFICERS**

【SEC. 527. A person who has served as a Reserve officer may not be reappointed or reassigned to active duty until the expiration of a period of time equal to his preceding tour of duty or until the expiration of a year, whichever is the shorter.

#### **【REINSTATEMENT OF RESERVE OFFICERS**

【SEC. 528. Upon the termination of the assignment of a Reserve officer assigned from any Government agency, such person shall be entitled to reinstatement in the Government agency by which he is regularly employed in the same position he occupied at the time of assignment, or in a corresponding or higher position. Upon reinstatement he shall receive the within-grade salary advancements he would have been entitled to receive had he remained in the position in which he is regularly employed under the Classification Act of 1949, as amended, or any corresponding provision of law applicable to the position in which he is serving. A certificate of the Secretary that such person has met the standards required for the efficient conduct of the work of the Foreign Service shall satisfy any requirements as to the holding of minimum ratings as a prerequisite to the receipt of such salary advancements.

#### **【PART D—FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES**

#### **【APPOINTMENTS**

【SEC. 531. The Secretary may, under such regulations as he may prescribe, appoint staff officers and employees on the basis of qualifica-

tions and experience. The Secretary may make provisions for temporary, limited, and such other types of appointment as he may deem necessary. He is authorized to establish appropriate probationary periods during which newly appointed staff officers or employees, other than those appointed for temporary or limited services shall be required to serve. The Secretary may terminate at any time, without regard to the provisions of section 637, or the provisions of any other law, the services of staff officers or employees appointed for temporary or limited service and staff officers or employees who have not completed probationary periods, except that if such separation is by reason of misconduct the provisions of section 637 shall be applicable.

**[ASSIGNMENTS AND TRANSFERS**

**[SEC. 532.** Under such regulations as he may prescribe, the Secretary may assign a staff officer or employee to any post or he may assign him to serve in any position in which he is eligible to serve under the terms of this or any other Act. A staff officer or employee may be transferred from one post to another by order of the Secretary as the interests of the Service may require.

**[COMMISSION AS CONSUL OR VICE CONSUL**

**[SEC. 533.** On the recommendation of the Secretary, the President may, by and with the advice and consent of the Senate, commission a staff officer or employee as consul. The Secretary may commission a staff officer or employee as vice consul. Official acts of staff officers or employees while serving under consular commissions in the Service shall be performed under their respective commissions as consular officers.

**[CITIZENSHIP REQUIREMENT**

**[SEC. 534.** No person shall be eligible for appointment as staff officer or employee who is not a citizen of the United States at the time of his appointment.

**[PART E—ALIEN CLERKS AND EMPLOYEES**

**[APPOINTMENTS**

**[SEC. 541.** The Secretary shall appoint alien clerks and employees at posts abroad under such regulations as he may prescribe and, as soon as practicable, in accordance with the provisions of section 444.

**[ASSIGNMENTS AND TRANSFERS**

**[SEC. 542.** The Secretary may assign an alien clerk or employee to a position at any post, and any such clerk or employee may be transferred from a position at one post to a position at another as the interests of the Service may require.

**[PART F—CONSULAR AGENTS**

**[SEC. 551.** The Secretary may appoint consular agents under such regulations as he may prescribe and, as soon as practicable, in accordance with the provisions of section 445.



**[PART G—ASSIGNMENT OF PERSONNEL BY THE WAR AND NAVY DEPARTMENTS**

**[PART H—ASSIGNMENT OF FOREIGN SERVICE PERSONNEL**

**[ASSIGNMENTS TO ANY GOVERNMENT AGENCY OR INTERNATIONAL ORGANIZATION**

**[SEC. 571.** Any officers or employee of the Service may, in the discretion of the Secretary, be assigned or detailed for duty in any Government agency, or in any international organization, international commission, or international body, such as assignment or combination of assignments to be for a period of not more than four years, except that under special circumstances the Secretary may extend this four-year period for not more than four additional years: *Provided*, That in individual cases when personally approved by the Secretary further extension may be made.

**[(b)** If a Foreign Service officer or Reserve officer shall be appointed by the President, by and with the advice and consent of the Senate, or by the President alone, to a position in any Government agency, any United States delegation or mission to any international organization, in any international commission, or in any international body, the period of his service in such capacity shall be construed as constituting an assignment within the meaning of paragraph (a) of this section and such person shall not, by virtue of the acceptance of such an assignment, lose his status as such an officer. Service in such a position shall not, however, be subject to the limitations concerning the duration of an assignment contained in that paragraph.

**[(c)** If the basic minimum salary of the position to which an officer or employee of the Service is assigned pursuant to the terms of this section is higher than the salary such officer or employee is entitled to receive as an officer or employee of the Service, such officer or employee shall, during the period such difference in salary exists, receive the salary and allowances of the position in which he is serving in lieu of his salary and allowances as an officer or employee of the Service. Any salary paid under the provisions of this section shall be the salary on the basis of which computations and payments shall be made in accordance with the provisions of title VIII. No officer or employee of the Service who, subsequent to the date of enactment of the Foreign Service Act Amendments of 1960, is assigned to, or who, after June 30, 1961, occupies a position in the Department that is designated as a Foreign Service officer position, shall be entitled to receive a salary differential under the provisions of this paragraph.

**[(d)** The salary of an officer or employee assigned pursuant to the terms of this section shall be paid from appropriations made available for the payment of salaries of officers and employees of the Service. Such appropriations may be reimbursed, however, when the Secretary enters into reimbursement agreements for all or any part of the salaries of officers or employees assigned to such agencies and payment is received pursuant thereto, or when an officer or employee of the Service is assigned to a position the salary of which is payable from other funds available to the Department.

**【COMPULSORY SERVICE OF FOREIGN SERVICE OFFICERS IN THE CONTINENTAL UNITED STATES**

**【SEC. 572.** Every Foreign Service officer shall, during his first fifteen years of service in such capacity, be assigned for duty in the continental United States in accordance with the provisions of section 571 for periods totaling not less than three years.

**【ASSIGNMENT FOR CONSULTATION OR INSTRUCTION**

**【SEC. 573. (a)** Any officer or employee of the Service may, in the discretion of the Secretary, be assigned or detailed to any Government agency for consultation or specific instruction either at the commencement, during the course of, or at the close of the period of his official service; and any such detail or assignment, if not more than four months in duration, shall not be considered as an assignment within the meaning of section 571.

**【(b)** Any officer or employee of the Service may be assigned or detailed for special instruction or training at or with public or private nonprofit institutions; trade, labor, agricultural, or scientific associations, or commercial firms.

**【ASSIGNMENT TO TRADE, LABOR, AGRICULTURE, SCIENTIFIC, OR OTHER CONFERENCES**

**【SEC. 574.** An officer or employee of the Service may, in the discretion of the Secretary, be assigned or detailed for duty with domestic or international trade, labor, agricultural, scientific, or other conferences, congresses, or gatherings, including those whose place of meeting is in the continental United States; or for other special duties, including temporary details under commission not at his post or in the Department.

**【ASSIGNMENTS TO FOREIGN GOVERNMENTS**

**【SEC. 575.** The Secretary may, in his discretion, assign or detail an officer or employee of the Service for temporary service to or in cooperation with the government of another country in accordance with the appropriate provisions of titles III and IX of Public Law 402, Eightieth Congress (62 Stat. 7 and 13; 22 U.S.C. 1451-1453, 1478 and 1479).

**【ASSIGNMENTS TO PUBLIC OR PRIVATE NONPROFIT ORGANIZATIONS**

**【SEC. 576. (a) (1)** A substantial number of Foreign Service officers shall, after their seventh year of service (counting service as a Foreign Service officer and prior service as a Foreign Service Reserve officer), be assigned in the United States, or any territory or possession thereof, for significant duty with a State or local government, public school, community college, or other public or private nonprofit organization designated by the Secretary. Such duty may include assignment to a Member or office of the Congress, except that of the total number of officers assigned under this section at any one time, not more than 20 per centum may be assigned to Congress.

[(2) To the extent practical, assignments shall be for at least twelve consecutive months and may be on a reimbursable basis. Any such reimbursements shall be credited to and used by the appropriations made available for the salaries and expenses of officers or employees.

[(b) A Foreign Service officer on assignment under this section shall be deemed to be on detail to a regular work assignment in the Service, and the officer remains an employee of the Department while so assigned. Reimbursement for an assignment to a Member or office of the Senate shall be made at the rate of one-half of the current salary of the Foreign Service officer (who shall continue to be paid his or her full salary by the Department of State).

[(c) Any period of time that a Foreign Service officer serves on an assignment under this section shall also be considered as a period of time that the officer was assigned for duty in the continental United States for purposes of section 572 of this Act.

[(d) For purposes of this section—

[(1) "State" means—

[(A) a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and a territory or possession of the United States; and

[(B) an instrumentality or authority of a State or States as defined in subparagraph (A) of this paragraph (1) and a Federal-State authority or instrumentality; and

[(2) "local government" means—

[(A) any political subdivision, instrumentality, or authority of a State or States as defined in subparagraph (A) of paragraph (1); and

[(B) any general or special purpose agency of such a political subdivision, instrumentality, or authority.

[(e) Not later than six months after the date of enactment of this subsection, the Secretary shall transmit a report to the Speaker of the House of Representatives and the Committee on Foreign Relations of the Senate describing the steps he has taken to carry out the provisions of this section; and he shall transmit such reports annually thereafter.

[(f) The Secretary may reimburse a Foreign Service Officer for relocation expenses incident to household moves necessitated by an assignment under this section for which the officer is not entitled to be reimbursed under any other provision of law. For purposes of such reimbursement, regulations issued pursuant to section 5724a(a)(3) of title 5, United States Code, shall apply to the same extent as if the officer were entitled to be reimbursed for travel and transportation expenses under section 5724(a) of that title.

#### [FOREIGN LANGUAGE KNOWLEDGE PREREQUISITE TO ASSIGNMENT

[SEC. 578. The Secretary shall designate every Foreign Service officer position in a foreign country whose incumbent should have a useful knowledge of a language or dialect common to such country. After December 31, 1963, each position so designated shall be filled only by an incumbent having such knowledge: *Provided*, That the Secretary or Deputy Under Secretary for Administration may make exceptions to this requirement for individuals or when special or

emergency conditions exist. The Secretary shall establish foreign language standards for assignment abroad of officers and employees of the Service, and shall arrange for appropriate language training of such officers and employees at the Foreign Service Institute or elsewhere.

## **【TITLE VI—PERSONNEL ADMINISTRATION**

### **【PART A—DEFINITIONS**

**【Sec. 601. For the purposes of this title—**

**【(1) “Efficiency record” is the term which describes those materials considered by the Director General to be pertinent to the preparation of an evaluation of the performance of an officer or employee of the Service.**

**【(2) “Efficiency report” is the term which designates the analysis of the performance of an officer or employee made by his supervising officer or by a Foreign Service inspector in accordance with such regulations as may be prescribed by the Secretary.**

### **【PART B—EFFICIENCY RECORDS**

#### **【RESPONSIBILITY OF THE DIRECTOR GENERAL FOR THE KEEPING OF EFFICIENCY RECORDS**

**【Sec. 611. The Director General acting under the general direction of the Board of the Foreign Service, shall be responsible for the keeping of accurate and impartial efficiency records. Under his direction there shall be assembled, recorded, and preserved all available information in regard to the character, ability, conduct, quality of work, industry, experience, dependability, and general usefulness of all officers and employees of the Service including the reports of Foreign Service inspectors and the efficiency reports of supervising officers. The Director General shall undertake such statistical and other analyses as may be necessary to develop the validity and reliability of efficiency reporting forms and procedures.**

#### **【TO WHOM RECORDS SHALL BE AVAILABLE**

**【Sec. 612. The correspondence and records of the Department relating to the officers and employees of the Service, including efficiency records as defined in section 601 (1) but not including records pertaining to the receipt, disbursement, and accounting for public funds, shall be confidential and subject to inspection only by the President, the Secretary, the Under Secretary, the Counselor of the Department, the legislative and appropriations committees of the Congress charged with considering legislation and appropriations for the Service or representatives duly authorized by such committees, the members of the Board of the Foreign Service, the Director General, and such officers and employees of the Government as may be assigned by the Secretary to work on such records. Under such regulations as the Secretary may prescribe and in the interest of efficient personnel administration, the whole or any portion of an efficiency record shall, upon written request, be divulged to the officer or employee to whom such record relates.**

**[PART C—PROMOTION OF FOREIGN SERVICE OFFICERS AND FOREIGN SERVICE RESERVE OFFICERS**

**[PROMOTION OF FOREIGN OFFICERS BY SELECTION**

**[SEC. 621.** All promotions of Foreign Service officers shall be made by the President, in accordance with such regulations as he may prescribe, by appointment to a higher class, by and with the advice and consent of the Senate. Promotion shall be by selection on the basis of merit. The affidavit requirements of sections 3332 and 3333(a) of title 5 of the United States Code shall not apply with respect to a Foreign Service officer who has complied with such requirements and who is subsequently promoted by appointment to a higher class without a break in service.

**[ELIGIBILITY**

**[SEC. 622.** The Secretary shall, by regulation, determine the minimum period Foreign Service officers must serve in each class and a standard for performance for each class which they must meet in order to become eligible for promotion to a higher class. In the event the Director General shall certify to the Board of the Foreign Service that a Foreign Service officer has rendered extraordinarily meritorious service, the Board of the Foreign Service may recommend to the Secretary that such officer shall not be required to serve such minimum period in class as a prerequisite to promotion, and the Secretary may exempt such officer from such requirement.

**[RECOMMENDATIONS FOR PROMOTIONS**

**[SEC. 623. (a)** The Secretary shall establish, with the advice of the Board of the Foreign Service, selection boards to evaluate the performance of Foreign Service officers; and upon the basis of their findings, which, except for career ambassadors and career ministers, shall be submitted to the Secretary in rank order by class or in rank order by specialization within a class, the Secretary shall make recommendations in accordance with the findings to the President for the promotion of Foreign Service officers. No person assigned to serve on any such board shall serve in such capacity for any two consecutive years. In special circumstances, however, which shall be set forth by regulations, the Secretary shall have the authority to remove individual names from the rank order list submitted by the selection boards or to delay the inclusion of individual names until a subsequent list of nominations is transmitted to the President.

**[(b)** The Secretary may, pursuant to a recommendation of a duly constituted grievance board or panel or an equal employment opportunity appeals examiner—

**[(1)** recommend to the President the promotion of a Foreign Service officer;

**[(2)** promote Foreign Service Staff personnel and Foreign Service Reserve officers with limited or unlimited tenure; and

**[(3)** grant to Foreign Service personnel additional step increases in salary, within the salary range established for the class in which an officer or employee is serving.

[(c) The Secretary may, in special circumstances which shall be set forth in regulations, make retroactive promotions and additional increases in salary within class made or granted under the authority of this section.

**[PROMOTION OF FOREIGN SERVICE RESERVE OFFICERS]**

[SEC. 624. Any Reserve officer may receive promotions from one class to a next higher class in accordance with regulations prescribed by the Secretary.

**[WITHIN-CLASS SALARY INCREASES OF FOREIGN SERVICE OFFICERS AND RESERVE OFFICERS]**

[SEC. 625. (a) Any Foreign Service Officer or any Reserve officer, whose services meet the standards required for the efficient conduct of the work of the Service and who shall have been in a given class for a continuous period of nine months or more, shall, on the first day of the first pay period that begins on or after July 1 each year, receive an increase in salary to the next higher rate for the class in which such officer is serving. Credit toward such nine-month period may be granted to an officer in accordance with such regulations as the Secretary may prescribe for any civilian service of such officer with the Government or with the government of the District of Columbia which was performed subsequent to any break in service in excess of three calendar days and subsequent to the officer's last equivalent increase in pay. As used in this subsection, the term "equivalent increase in pay" means—

[(1) any increase in basic salary resulting from—

[(A) a grade or class promotion,

[(B) a regularly scheduled within-grade or within-class step increase, or

[(C) a salary adjustment or combination of adjustments—

[(i) made since the last equivalent increase in pay,

[(ii) resulting from conversion from one pay system to another, and

[(iii) equal to or greater than the amount of the within-class increase for the class to which the officer was appointed; or

[(2) such other increases in salary as the Secretary may by regulation designate;

but does not include any general increase in salary granted by law or any within-grade or within-class increase in salary awarded for meritorious performance.

[(b) Without regard to any other law, the Secretary is authorized to grant to any Foreign Service officer or any Reserve officer additional increases in salary, within the salary range established for the class in which such officer is serving, based upon especially meritorious service.

**[RELATIONSHIP BETWEEN PROMOTIONS AND FUNCTIONAL AND GEOGRAPHIC AREA SPECIALIZATION]**

[SEC. 626. The achievement of the objective of this Act requires increasing numbers of Foreign Service officers to acquire functional

and geographic area specializations and to pursue such specializations for a substantial part of their careers. Such specialization shall not in any way inhibit or prejudice the orderly advancement through class 1 of any such officer in the Foreign Service.

**[PART D—SEPARATION OF OFFICERS AND EMPLOYEES FROM THE SERVICE**

**[FOREIGN SERVICE OFFICERS WHO ARE CAREER AMBASSADORS**

**[SEC. 631.** Any Foreign Service officer who is a career ambassador, other than one occupying a position as chief of mission or any other position to which appointed by the President, by and with the advice and consent of the Senate, shall be retired from the Service at the end of the month in which the officer reaches age sixty-five and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, such an officer may be retained on active service for a period not to exceed five years. Any such officer who completes a period of authorized service after reaching age sixty-five shall be retired at the end of the month in which such service is completed.

**[PARTICIPANTS IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM WHO ARE NOT CAREER AMBASSADORS**

**[SEC. 632.** Any participant in the Foreign Service Retirement and Disability System, other than one occupying a position as chief of mission or any other position to which appointed by the President, by and with the advice and consent of the Senate, who is not a career ambassador shall be retired from the Service at the end of the month in which the participant reaches age sixty and receive retirement benefits in accordance with the provisions of section 821, but whenever the Secretary shall determine it to be in the public interest, such a participant may be retained on active service for a period not to exceed five years. Any such participant who completes a period of authorized service after reaching age sixty shall be retired at the end of the month in which such service is completed.

**[SELECTION-OUT**

**[SEC. 633. (a)** The Secretary shall prescribe regulations concerning—

**[(1)** the maximum period during which any Foreign Service officer below the class of career minister shall be permitted to remain in class without promotion; and

**[(2)** the standard of performance which any such officer must maintain to remain in the Service.

**[(b)** Any Foreign Service officer below the class of career minister who does not receive a promotion to a higher class within the specified period or who fails to meet the standard of performance required of officers of his class shall be retired from the Service and receive benefits in accordance with the provisions of section 634.

**[SELECTION-OUT BENEFITS**

**[SEC. 634. (a)** Any Foreign Service officer in classes 1, 2, or 3 who is retired from the Service in accordance with the provisions of section 633 shall receive retirement benefits in accordance with the provisions of section 821.

**[(b)** Any Foreign Service officer in classes 4, 5, 6, or 7 who is retired from Service in accordance with the provisions of section 633 shall receive—

**[(1)** one-twelfth of a year's salary at his then current salary rate for each year of service and proportionately for a fraction of a year, but not exceeding a total of one year's salary at his then current salary rate, payable without interest, from the Foreign Service Retirement and Disability Fund, in three equal installments on the 1st day of January following the officer's retirement and on the two anniversaries of this date immediately following: *Provided*, That in special cases, the Secretary may in his discretion accelerate or combine the installments; and

**[(2)** a refund of the contributions made to the Foreign Service Retirement and Disability Fund as provided in section 841, except that in lieu of such refund such officer, if he has at least five years of service credit toward retirement under the Foreign Service Retirement and Disability System, excluding military or naval service, may elect to receive retirement benefits on reaching the age of sixty in accordance with the provisions of section 821. In the event that an officer who was separated from class 4 or 5 and who has elected to receive retirement benefits dies before reaching the age of sixty, his death shall be considered a death in service within the meaning of section 832. In the event that an officer who was separated from class 6 or 7 and who has elected to receive retirement benefits dies before reaching the age of sixty, the total amount of his contributions made to the Foreign Service Retirement and Disability Fund shall be paid in accordance with the provisions of section 841.

**[(c)** Notwithstanding the provisions of section 3477 of the Revised Statutes as amended (31 U.S.C. 203) or the provisions of any other law, a Foreign Service officer who is retired in accordance with the provisions of section 633 shall have the right to assign to any person or corporation the whole or any part of the benefits receivable by him pursuant to paragraph (b) (1) of this section. Any such assignment shall be on a form approved by the Secretary of the Treasury and a copy thereof shall be deposited with the Secretary of the Treasury by the officer executing the assignment.

**[FOREIGN SERVICE OFFICERS RETIRED FROM CLASS 7 OR 8**

**[SEC. 635.** Any Foreign Service officer in class 7 who is appointed under the provisions of section 516(b) and any Foreign Service officer in class 8 shall occupy probationary status. The Secretary may terminate his service at any time.



**[VOLUNTARY RETIREMENT]**

**[SEC. 636.** Any participant in the Foreign Service Retirement and Disability System who is at least fifty years of age and has rendered twenty years of service, including service within the meaning of section 853, may on his own application and with the consent of the Secretary be retired from the Service and receive benefits in accordance with the provisions of section 821.

**[SEPARATION FOR CAUSE]**

**[SEC. 637. (a)** The Secretary may, under such regulations as he may prescribe, separate from the Service any Foreign Service officer, Reserve officer, or staff officer or employee, on account of the unsatisfactory performance of his duties, or for such other cause as will promote the efficiency of the Service, with reasons given in writing, but no such officer or employee shall be so separated until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties, or other cause for separation, shall have been established at such hearing, unless he shall have waived in writing his right to a hearing. The provisions of this section shall not apply to Foreign Service officers of class 8 or any other officer or employee of the Service who is in a probationary status or whose appointment is limited or temporary, except when separation is by reason of misconduct.

**[ (b)** Any participant in the Foreign Service Retirement and Disability System separated under the provisions of paragraph (a) of this section shall receive a refund of the contributions made to the Foreign Service Retirement and Disability Fund, as provided in section 841 except that in lieu of such refund such officer may (except in cases where the Secretary determines that separation was based in whole or in part on the ground of disloyalty to the United States) if he has at least five years of service credit toward retirement under this System, excluding military or naval service, elect to leave his contributions in the Fund and receive an annuity, computed as prescribed in section 821 commencing at the age of sixty years.

**[ (c)** Any officer or employee of the Service separated under the provisions of paragraph (a) of this section who is not a participant in the Foreign Service Retirement and Disability System shall be entitled only to such benefit as shall accrue to him under the retirement system in which he is a participant.

**[ (d)** Any payments made in accordance with the provisions of paragraph (b) of this section shall be made out of the Foreign Service Retirement and Disability Fund.

**[TERMINATION OF LIMITED APPOINTMENTS OF FOREIGN SERVICE  
RESERVE OFFICERS AND STAFF OFFICERS AND EMPLOYEES]**

**[SEC. 638.** Notwithstanding the provisions of this or any other law, the Secretary may, under such regulations as he may prescribe, terminate at any time the services of any Reserve officer or staff officer or employee serving under limited appointment, except that, if the termination is because of misconduct, the provisions of section 637 shall be applicable.

**[FACILITATING VOLUNTARY RETIREMENTS]**

**[SEC. 639.** In order to facilitate their transition from the Service, the Secretary may provide professional career counseling, advice, and placement assistance, by contract or otherwise (subject to the availability of appropriations), to officers and employees of the Service, other than those separated for cause.

**[PART E—PROMOTION OF FOREIGN SERVICE STAFF OFFICERS AND EMPLOYEES]**

**[CLASS PROMOTION OF STAFF PERSONNEL]**

**[SEC. 641.** All promotions of staff officers and employees to a higher class shall be made at a higher salary on the basis of performance and merit in accordance with such regulations as the Secretary may prescribe.

**[WITHIN-CLASS SALARY INCREASES]**

**[SEC. 642.** Under such regulations as the Secretary may prescribe, any staff officer or employee whose services meet the standards required for the efficient conduct of the work of the Service shall receive an increase in salary at periodic intervals to the next higher salary rate for the class in which he is serving. Without regard to any other law the Secretary is authorized to grant any such officer or employee additional increases in salary within the salary range established for the class in which he is serving, based upon specifically meritorious service.

**[PART F—SEPARATION OF STAFF OFFICERS AND EMPLOYEES]**

**[FOR UNSATISFACTORY PERFORMANCE OF DUTY]**

**[SEC. 651.** The Secretary may, under such regulations as he may prescribe, separate from the Service any staff officer or employee on account of the unsatisfactory performance of his duties, but no such officer or employee shall be so separated from the Service until he shall have been granted a hearing by the Board of the Foreign Service and the unsatisfactory performance of his duties shall have been established at such hearing.

**[FOR MISCONDUCT OR MALFEASANCE]**

**[SEC. 652.** The Secretary shall separate from the Service any staff officer or employee who shall be guilty of misconduct or malfeasance in office, but no such officer or employee shall be so separated from the Service until he shall have been granted a hearing by the Board of the Foreign Service and his misconduct or malfeasance shall have been established at such hearing.

**[PART G—PROMOTION AND SEPARATION OF ALIEN CLERKS AND EMPLOYEES]**

**[PROMOTION]**

**[SEC. 661.** Alien clerks and employees shall receive promotions from one class to a higher class and in-class promotions in accordance with regulations prescribed by the Secretary.

**[FOR UNSATISFACTORY PERFORMANCE OF DUTY]**

**[SEC. 662.** The Secretary may, under such regulations as he may prescribe, separate from the Service any alien clerk or employee on account of the unsatisfactory performance of his duties.

**[SEPARATION FOR MISCONDUCT OR MALFEASANCE]**

**[SEC. 663.** The Secretary shall separate from the Service any alien clerk or employee who shall be found guilty of misconduct or malfeasance.

**[PART H—SEPARATION OF CONSULAR AGENTS]**

**[SEC. 671.** The Secretary may, under such regulations as he may prescribe, separate any consular agent from the Service on account of—

- [(a)** the unsatisfactory performance of his duties; or
- [(b)** misconduct or malfeasance.

**[PART I—INSPECTION]**

**[SEC. 681.** The Secretary shall assign or detail Foreign Service Officers as Foreign Service inspectors to inspect in a substantially uniform manner and at least once every two years the work of the diplomatic and consular establishments of the United States. Whenever the Secretary has reason to believe that the business of a consulate is not being properly conducted and that it is necessary in the public interest, he may authorize any Foreign Service inspector to suspend the principal officer or any subordinate consular officer and to administer the office in the place of the principal officer for a period not exceeding ninety days. The Secretary may also authorize a Foreign Service inspector to suspend any diplomatic officer except a chief of mission. A Foreign Service inspector shall have the authority to suspend any other officer or employee of the Service.

**[PART J—FOREIGN SERVICE GRIEVANCES]**

**[STATEMENT OF PURPOSE]**

**[SEC. 691.** It is the purpose of this part to provide officers and employees of the Service and their survivors a grievance procedure to insure a full measure of due process, and to provide for the just consideration and resolution of grievances of such officers, employees, and survivors.

**[REGULATIONS OF THE SECRETARY**

**[SEC. 692.** The Secretary shall, consistent with the purposes stated in section 691 of this Act, implement this part by promulgating regulations, and revising those regulations when necessary, to provide for the consideration and resolution of grievances by a board. No such regulation promulgated by the Secretary shall in any manner alter or abridge the provisions of due process established by this section for grievants. The regulations shall include, but not be limited to, the following:

**[(1)** Procedures for the resolution of grievances in accordance with the purposes of this part shall be established by agreement between the Secretary and the organization accorded recognition as the exclusive representative of the officers and employees of the Service. If a grievance is not otherwise resolved under agency procedures within ninety days of presentation, a grievant shall be entitled to file a grievance with the board for its consideration and resolution. For the purposes of the regulations—

**[(A)** “grievant” shall mean any officer or employee of the Service who is a citizen of the United States; or for purposes of subparagraphs (C) and (D), a former officer or employee of the Service; or in the case of death of the officer or employee, a surviving spouse or dependent family member of the officer or employee;

**[(B)** “grievance” shall mean any act or condition subject to the control of the Department of State, United States Information Agency, or the Agency for International Development (hereafter in this part referred to as the foreign affairs agencies, or agencies) which is alleged to deprive the grievant of a right or benefit authorized by law or regulation, or is otherwise a source of concern or dissatisfaction to the grievant; and grievances shall include but not be limited to complaints against separation of an officer or employee allegedly contrary to law or regulation or predicated upon alleged inaccuracy (including inaccuracy resulting from omission of any relevant and material document) or falsely prejudicial character of any part of the grievant's official personnel record; other alleged violation, misinterpretation, or misapplication of applicable law, regulation, or published policy affecting the terms and conditions of the grievant's employment or career status; allegedly wrongful disciplinary action against an employee constituting a reprimand or suspension from official duties; dissatisfaction with any matter subject to the control of the agency with respect to the grievant's physical working environment; alleged inaccuracy, error, or falsely prejudicial material in the grievant's official personnel file; and action alleged to be in the nature of reprisal for an employee's participation in grievance procedures; but grievances shall not include complaints against individual assignments or transfers of Foreign Service officers or employees which are ordered in accordance with law and regulation, judgments of Selection Boards pursuant to section 623 or of equivalent bodies in ranking Foreign Service officers and employees for promotion on the basis of merit or judgments in examinations prescribed by the Board of Examiners pursuant

to section 516 or 517, termination of time limited appointments pursuant to section 638 and the pertinent regulations prescribed by the employing agency, or any complaints or appeals where a specific statutory appeal procedure exists (other matters not specified in this paragraph may be excluded as grievances only by written agreement of the agencies and the exclusive representative organization) ;

[(C) except as provided in paragraph (D) when the grievant is a former officer or employee or a surviving spouse or dependent family member of a former officer or employee, "grievance" shall mean a complaint that an allowance or other financial benefit has been denied arbitrarily, capriciously, or contrary to applicable law or regulation ;

[(D) when the grievant is a former officer who was involuntarily retired pursuant to sections 633 and 634 of this Act within six years prior to the enactment of this part, "grievance" shall mean a complaint that such involuntary retirement violated applicable law or regulation effective at the time of the retirement or that the involuntary retirement was predicated directly upon material contained in the grievant's official personnel file alleged to be erroneous or falsely prejudicial in character ; and

[(E) "party" shall mean the grievant or the foreign affairs agency having control over the act or condition forming the subject matter of the grievance.

[(2) (A) The board considering and resolving grievances shall be composed of independent, distinguished citizens of the United States, well-known for their integrity, who are not active officers, employees or consultants of the foreign affairs agencies (except as members of the Grievance Board established under 3 Foreign Affairs Manual 660) but may be retired officers or employees. The board shall consist of not less than five members including a Chairman. Membership of the board, selection of the Chairman, and terms of the service of the members shall be determined by the foreign affairs agencies and the organization accorded recognition as the exclusive representative of the officers or employees of the Service in accordance with procedures agreed pursuant to paragraph (1). If the agencies and organization do not agree on membership of the board prior to the effective date of this part, the members shall be chosen by elimination, in equal numbers from a list submitted by the agencies and a list submitted by the organization, and the Chairman shall be chosen, by alternate striking by the agencies and the organization, from a separate list obtained from the Federal Mediation and Conciliation Service. Unless otherwise agreed upon, the term of service shall be two years, renewable. All members of the board shall act as impartial individuals in considering grievances. The board may act by or through panels or individual members designated by the Chairman, except that hearings within the continental United States shall be held by panels of at least three members unless the parties agree otherwise. Members including the Chairman who are not employees of the Federal Government shall receive compensation for each day they are performing their duties as members of the board (including traveltime) at the daily rate paid an individual at GS-18 of the General Schedule under section 5332 of title 5 of the United States Code.

[(B) In accordance with this part, the board may adopt regulations concerning the organization of the board and such regulations as may be necessary to govern its proceedings. The board may obtain facilities, services and supplies through the general administrative services of the Department of State. All expenses of the board shall be paid out of the funds appropriated to the Department for obligation and expenditure by the board. At the request of the board, officers and employees on the rolls of the foreign affairs agencies may be assigned as staff employees for the board. Within the limit of appropriated funds, the board may appoint and fix the compensation of such other employees as the board considers necessary to carry out its functions. The officers and employees so appointed or assigned shall be responsible solely to the board and the board shall prepare the performance evaluation reports for such officers and employees. The records of the board shall be maintained by the board and shall be separate from all other records of the foreign affairs agencies.

[(3) A grievance under such regulations is forever barred, and the board shall not consider or resolve the grievance, unless the grievance is presented within a period of three years after the occurrence or occurrences giving rise to the grievance, except that if the grievance arose earlier than two years prior to the date the regulations are first promulgated or placed into effect, the grievance shall be so barred, and not so considered and resolved, unless it is presented within a period of two years after the effective date of the regulations. There shall be excluded from the computation of any such period any time during which the grievant was unaware of the grounds which are the basis of the grievance and could not have discovered such grounds if he or she had exercised, as determined by the board, reasonable diligence.

[(4) The board shall conduct a hearing, at the request of a grievant, in any case which involves disciplinary action or a grievant's retirement from the Service under section 633 of this Act or which in the judgment of the board can best be resolved by a hearing or by presentation of oral argument. The grievant, a reasonable number of representatives of the grievant's own choosing, and a reasonable number of representatives of the foreign affairs agency concerned are entitled to be present at the hearing. The board may, after considering the views of the parties and any other individuals connected with the grievance, decide that a hearing should be open to others. Testimony at a hearing shall be given by oath or affirmation, which any board member or person designated by the board shall have authority to administer (and this paragraph so authorizes). Each party (A) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition, and (B) shall be entitled to serve interrogatories upon another party and have such interrogatories answered by the other party unless the board finds such interrogatory irrelevant or immaterial. Upon request of the board, or upon a request of the grievant deemed relevant and material by the board, the foreign affairs agencies shall promptly make available at the hearing or by deposition any witness under the control, supervision, or responsibility of the foreign affairs agencies, except that if the board determines that the presence of such witness at the hearing is required for just resolution of the grievance, then the witness shall be made available at the hearing.

[(5) Any grievant filing a grievance, and any witness or other person involved in a proceeding under the regulations adopted pursuant to paragraph (1), shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal in those proceedings or by virtue of them. The grievant has the right to a representative of his own choosing at every stage of the proceedings. The grievant and his representatives who are under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to prepare, to be present, and to present the grievance of such grievant. Any witness under the control, supervision, or responsibility of the foreign affairs agencies shall be granted reasonable periods of administrative leave to appear and testify at any such proceeding.

[(6) In considering the validity of a grievance, the board (except as provided in paragraph (8)) shall have access, to the extent permitted by laws, to any agency record considered by the board to be relevant to the grievant and the subject matter of the grievance.

[(7) The agency shall, subject to applicable law, promptly furnish the grievant any agency record which the grievant requests to substantiate his grievance and which the board determines is relevant and material to the proceeding. When deemed appropriate by the board, a grievant may be supplied with only a summary or extract of classified material.

[(8) Notwithstanding paragraphs (6) and (7), nothing in this Act shall be construed to require the disclosure of any official agency record to the board or a grievant where the head of agency or his deputy determines in writing that such disclosure would adversely affect the foreign policy or national security of the United States.

[(9) The agencies shall use their best endeavors to expedite security clearances whenever necessary to insure a fair and prompt investigation and hearing.

[(10) During any hearings held by the board, any oral or documentary evidence may be received but the board shall exclude any irrelevant, immaterial, or unduly repetitious evidence as determined under section 556 of title 5 of the United States Code. A verbatim transcript shall be made of any hearing and shall be part of the record of proceedings. In those grievances in which the board holds no hearing, the board shall offer to each party the opportunity to review and to supplement, by written submissions, the record of proceedings prior to its decision. The board decision shall be based exclusively on the record of proceedings.

[(11) If the board determines that the agency is considering any action of the character of separation or termination of the grievant, disciplinary action against the grievant, or recovery from the grievant of alleged overpayment of salary, expenses, or allowances, which is related to a grievance pending before the board, and that such action should be suspended, the agency shall suspend such action until the board has ruled upon such grievance. Other matters not specified in this paragraph may be made subject to suspension of action by the procedures established by agreement under paragraph (1). Notwithstanding such suspension of action, the head of the agency concerned or a chief of mission or principal officer may exclude an officer or

employee from official premises or from the performance of specified duties when determined in writing to be essential to the functioning of the post or office to which the employee is assigned.

[(12) Upon completion of the hearing or the compilation of such record as the board may find appropriate in the absence of a hearing, the board shall expeditiously decide the grievance on the basis of the record of proceedings. In each case the decision of the board shall be in writing, shall include findings of fact, and shall include the reasons for the board's decision. The grievant shall have access to the record of proceedings including the decision.

[(13) If the board finds that the grievance is meritorious, the board shall have authority, within the limitations of the authority of the head of the agency, to direct the agency (A) to correct any official personnel record relating to the grievant which the board finds to be inaccurate or falsely prejudicial; (B) to reverse an administrative decision denying the grievant compensation or any other prerequisite of employment authorized by law or regulation when the board finds that such denial was arbitrary, capricious, or contrary to law or regulation; (C) to retain in service an employee whose termination would be in consequence of the matter by which the employee is aggrieved; (D) to reinstate with back pay, under applicable law and regulations, an employee where it is clearly established that the separation or suspension without pay of the employee was unjustified or unwarranted; and (E) to take such other remedial action as may be provided in the procedures agreed pursuant to paragraph (1). Such orders of the board shall be final, subject to judicial review as provided in section 694, except that reinstatement of former officers who have filed grievances under paragraph (1) (D) shall be presented as board recommendations, the decision on which shall be subject to the sole discretion of the agency head or his designee who shall take into account the needs of the Service in deciding on such recommendations, and shall not be reviewable under section 694.

[(14) If the board finds that the grievance is meritorious and that remedial action should be taken that directly relates to promotion or assignment of the grievant or to other remedial action not provided in paragraph (13), or if the board finds that the evidence before it warrants disciplinary action against any officer or employee, it shall make an appropriate recommendation to the head of the agency, and forward to the head of the agency the record of the board's proceedings including the transcript of the hearing if any. The head of the agency (or his designee, who shall not have direct responsibility for administrative management) shall make a written decision on the board's recommendation. A recommendation of the board may be rejected in part or in toto if the action recommended would be contrary to law, would adversely affect the foreign policy or security of the United States, or would substantially impair the efficiency of the Service. If the decision rejects the recommendation in part or in toto, the decision shall state specifically any and all reasons for such action. Pending the decision, there shall be no ex parte communication concerning the grievance between the agency head (or his designee) and any person involved in the grievance proceeding.

[(15) The board shall have authority to insure that no copy of the determination of the agency head or his designee to reject a board rec-



ommendation, no notation of the failure of the board to find for the grievant, and no notation that a proceeding is pending or has been held, shall be entered in the personnel records of the grievant (unless by order of the grievance board as a remedy for the grievance) or any other officer or employee connected with the grievance. Nothing contained herein shall prevent the agency from maintaining grievance records under appropriate safeguards to preserve confidentiality.

• **[(16)** A grievant whose grievance is found not to be meritorious by the board may obtain reconsideration by the board only upon presenting newly discovered or previously unavailable material evidence not previously considered by the board and then only upon approval of the board.

**[RELATIONSHIP TO OTHER REMEDIES**

• **[SEC. 693. (a)** A grievant may not file a grievance under this part if he has formally requested, prior to filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved, and relief provided, under a provision of law, regulation, or Executive order (other than under this part) and the matter has been carried to final decision thereunder on its merits or is still under consideration.

**[(b)** If a grievant is not prohibited from filing a grievance under this part by subsection (a), he may file a grievance within the jurisdiction of the board under this part notwithstanding the fact that such grievance may be eligible for consideration, resolution, and relief under a regulation or Executive order other than under this part, but such election of remedies shall be final upon the acceptance of jurisdiction by the board.

**[JUDICIAL REVIEW**

**[SEC. 694.** Notwithstanding any other provision of law, any aggrieved party may obtain judicial review of regulations promulgated by the Secretary under section 692 of this Act, revisions of such regulations, and final actions of the agency head or the board pursuant to such section, in the District Courts of the United States, in accordance with the standards set forth in chapter 7 of title 5 of the United States Code. Section 706 of title 5 shall apply without limitation or exception.

**[TITLE VII—THE FOREIGN SERVICE INSTITUTE**

**[ESTABLISHMENT OF THE INSTITUTE**

• **[SEC. 701.** The Secretary shall, in order to furnish training and instruction to officers and employees of the Service and of the Department and to other officers and employees of the Government for whom training and instruction in the field of foreign relations is necessary, and in order to promote and foster programs of study incidental to such training, establish a Foreign Service Institute, hereinafter called the Institute. The Secretary may also provide appropriate orientation and language training to members of family of officers and employees of the Government in anticipation of the assignment abroad of such officers and employees or while abroad. Other agencies of the Govern-

ment shall wherever practicable avoid duplicating the facilities of the Institute and the training provided by the Secretary at the Institute or elsewhere.

**[THE DIRECTOR OF THE INSTITUTE—APPOINTMENT, SALARY, AND DUTIES**

**[SEC. 702.** The head of the Institute, who shall be known as its Director, shall be appointed by the Secretary. The Director shall, under the general supervision of the Director General and under such regulations as the Secretary may prescribe, establish the basic procedures to be followed by the Institute; plan and provide for the general nature of the training and instruction to be furnished at the Institute; correlate the training and instruction to be furnished at the Institute with the training activities of the Department and other Government agencies and with courses given at private institutions that are designed or may serve to furnish training and instruction to officers and employees of the Service; encourage and foster such programs outside of the Institute as will be complementary to those of the Institute; and take such other action as may be required for the proper administration of the Institute.

**[AID TO NONPROFIT INSTITUTIONS**

**[SEC. 703.** The Secretary may, within the limits of such appropriations as may be made specifically therefor, make grants or furnish such other gratuitous assistance as he may deem necessary or advisable to nonprofit institutions cooperating with the Institute in any of the programs conducted by the Director by authority of this title.

**[APPOINTMENT, ASSIGNMENT, AND DETAIL TO THE INSTITUTE**

**[SEC. 704. (a)** The Secretary may appoint to the faculty or staff of the Institute on a full- or part-time basis such personnel as he may deem necessary to carry out the provisions of this title in accordance with the provisions of the civil service laws and regulations and the Classification Act of 1949, as amended, except that, when deemed necessary by the Secretary for the effective administration of this title, personnel may be appointed without regard to such laws and regulations, but any person so appointed shall receive a salary at one of the rates provided by the Classification Act of 1949, as amended. All appointments to the faculty or staff of the Institute shall be made without regard to political affiliations and shall be made solely on the basis of demonstrated interest in, and capacity to promote, the purposes of the Institute.

**[(b)** The Secretary may, under such regulations as he may prescribe and on a full- or part-time basis, assign or detail officers and employees of the Service to serve on the faculty or staff of the Institute or to receive training at the Institute.

**[(c)** The Secretary may, under such regulations as he may prescribe and on a full- or part-time basis, assign or detail any officer or employee of the Department, and, with the consent of the head of the Government agency concerned, any other officer or employee of the Government, to serve on the faculty or staff of the Institute, or to

receive training. During the period of his assignment or detail, such officer or employee shall be considered as remaining in the position from which assigned.

[(d) It shall be the duty of the Director to make recommendations to the Secretary with regard to the appointment, assignment, or detail of persons to serve on the faculty or staff of the Institute, and the Secretary shall in each case take such recommendations into consideration in making such appointments, assignments, or details.

[(e) The Secretary may, under such regulations as he may prescribe, in the absence of suitably qualified United States citizens, employ persons who are not citizens of the United States by appointment to the staff of the Institute either on a full- or part-time basis or by contract for services in the United States or abroad at rates not in excess of those provided by the Classification Act of 1949, as amended (5 U.S.C. 5101).

[(f) The Secretary may, under such regulations as he may prescribe, provide special monetary or other incentives not inconsistent with this Act to encourage Foreign Service personnel to acquire or retain proficiency in esoteric foreign languages or special abilities needed in the Service.

#### [INSTRUCTION AND EDUCATION AT LOCALITIES OTHER THAN THE INSTITUTE]

[SEC. 705. The Secretary may, under such regulations as he may prescribe, pay the tuition and other expenses, of officers and employees of the Service, assigned or detailed in accordance with the provisions of section 573(b) for special instruction or training at or with public or private nonprofit institutions, trade, labor, agricultural, or scientific associations, or commercial firms.

#### [ENDOWMENTS AND GIFTS TO THE INSTITUTE]

[SEC. 706. The Secretary may accept, receive, hold, and administer gifts, bequests, or devises of money, securities, or property made for the benefit of, or in connection with, the Foreign Service Institute in accordance with part C of title X.

#### [ACQUISITION OF REAL PROPERTY]

[SEC. 707. The Secretary may, in the name of the United States, acquire such real property as may be necessary for the operation and maintenance of the Institute and, without regard to section 3709 of the Revised Statutes, such other property and equipment as may be necessary for its operation and maintenance.

#### [ORIENTATION AND LANGUAGE TRAINING FOR FAMILY MEMBERS]

[SEC. 708. (a) To facilitate orientation and language training provided to members of families of officers and employees of the Government pursuant to section 701, the Secretary may make grants to family members attending language and orientation programs of study of the Institute. No such grant may exceed the amount actually expended for necessary costs incurred in conjunction with such attendance, and in

no event may any such grant exceed \$300 per month per individual. No individual may receive such a grant for more than six months in connection with any one assignment.

[(b) If a member of the family of an officer or employee of the Government who is assigned abroad is unable to participate in language training provided by the Department at the Institute or elsewhere, the Secretary may partially compensate that family member for language training, related to the assignment abroad, which is undertaken at a public or private institution.

## **[TITLE VIII—THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM**

### **[PART A—ESTABLISHMENT OF SYSTEM**

#### **[RULES AND REGULATIONS**

[SEC. 801. (a) The President may prescribe rules and regulations for the maintenance of a Foreign Service Retirement and Disability System, originally established by section 18 of the Act of May 24, 1924 (43 Stat. 144), referred to hereafter as the System.

[(b) The Secretary shall administer the System in accordance with such rules and regulations and with the principles established by this Act.

#### **[MAINTENANCE OF FUND**

[SEC. 802. The Secretary of the Treasury shall maintain the special fund, known as the Foreign Service Retirement and Disability Fund, referred to hereafter as the Fund, originally constituted by section 18 of the Act of May 24, 1924 (43 Stat. 144).

#### **[PARTICIPANTS**

[SEC. 803. (a) The following persons, hereafter referred to as participants, shall be entitled to the benefits of the System:

[(1) All Foreign Service officers;

[(2) All other persons making contributions to the Fund on the effective date of this Act;

[(3) Any chief of mission who is not otherwise entitled to be a participant and who fulfills the conditions of paragraph (b) of this section;

[(4) All Foreign Service staff officers and employees appointed by the Secretary of State or the Director of the International Communication Agency with unlimited appointments.

[(b) A person to become a participant in accordance with the provisions of paragraph (a) (3) of this section must—

[(1) have served as chief of mission for an aggregate period of twenty years or more, exclusive of extra service credit in accordance with the provisions of section 853; and

[(2) have paid into the Fund a special contribution for each year of such service in accordance with the provisions of section 811.

**DEFINITIONS**

**SEC. 804.** When used in this title unless otherwise specified, the term—

[(1) "Annuitant" means any person including a former participant or survivor who meets all requirements for an annuity from the Fund under the provisions of this or any other Act and who has filed claim therefor.

[(2) "Surviving spouse" means the surviving wife or husband of a participant or annuitant who, in the case of a death in Service or marriage after retirement, was married to the participant or annuitant for at least two years<sup>1</sup> immediately preceding his or her death or is the parent of a child born of the marriage.

[(3) "Child", except in section 841, means an unmarried child, under the age of eighteen years, or such unmarried child regardless of age who because of physical or mental disability incurred before age eighteen is incapable of self-support. In addition to the offspring of the participant, such term includes (A) an adopted child, (B) a stepchild or recognized natural child who received more than one-half support from the participant, and (C) a child who lived with and for whom a petition of adoption was filed by a participant, and who is adopted by the surviving spouse of the participant after the latter's death. Such term also includes an unmarried student below the age of twenty-two years. For this purpose a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while a student is deemed to have become twenty-two years of age on the first day of July after that birthday.

[(4) "Student" means a child regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution. A child who is a student shall not be deemed to have ceased to be a student during any interim between school years, semesters, or terms if the interim or other period of nonattendance does not exceed five calendar months and if the child shows to the satisfaction of the Secretary that he or she has a bona fide intention of continuing to pursue such course during the school year, semester, or term immediately following the interim.

[(5) "Military and naval service" means honorable active service—

[(A) in the Armed Forces of the United States;

[(B) in the Regular or Reserve Corps of the Public Health Service after June 30, 1960; or

[(C) as a commissioned officer of the National Oceanic and Atmospheric Administration or predecessor organization after June 30, 1961;

but does not include service in the National Guard except when ordered to active duty in the service of the United States.

[(6) "Foreign Service normal cost" means the level percentage of payroll required to be deposited in the Fund to meet the cost of

<sup>1</sup> See footnote 2 on page 146.

benefits payable under the System (computed in accordance with generally accepted actuarial practice on an entry-age basis) less the value of retirement benefits earned under another retirement system for Government employees and less the cost of credit allowed for military service.

[(7) "Fund balance" means the sum of—

[(A) the investments of the Fund calculated at par value; and

[(B) the cash balance of the Fund on the books of the Treasury.

[(8) "Unfounded liability" means the estimated excess of the present value of all benefits payable from the Fund over the sum of—

[(A) the present value of deductions to be withheld from the future basic salary of participants and of future agency contributions to be made in their behalf; plus

[(B) the present value of Government payments to the Fund under section 865 of this title; plus

[(C) the Fund balance as of the date the unfunded liability is determined.

[(9) "Price index" means the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

[AUTHORITY TO MAINTAIN EXISTING AREAS OF CONFORMITY BETWEEN  
CIVIL SERVICE AND FOREIGN SERVICE RETIREMENT SYSTEMS

[SEC. 805. (a) In order to maintain existing conformity between the Civil Service Retirement and Disability System and the Foreign Service Retirement and Disability System, whenever (subsequent to January 1, 1974) a law is enacted which affects a provision of general applicability in the Civil Service Retirement and Disability System (subchapter III, chapter 83, title 5, United States Code) or otherwise affects current or former participants, annuitants, or survivors under that System which, immediately prior to the enactment of such law, had been substantially identical to a corresponding provision of law affecting participants, former participants, annuitants, or survivors under the Foreign Service Retirement and Disability System, such new provision of law shall be deemed to extend to the latter System so that it applies in like manner with respect to such Foreign Service Retirement and Disability System participants, former participants, annuitants, or survivors. The President is authorized by Executive order to prescribe regulations to implement this section and to make such extension retroactive to a date no earlier than the effective date of such provision for the Civil Service Retirement and Disability System.<sup>2</sup>

<sup>2</sup>On Jan. 7, 1977, the President exercised his authority under this section by issuing Executive Order 11952 (42 F.R. 2293). Such Executive Order was revoked by Executive Order 12145 of July 18, 1979 (44 F.R. 42653) after being incorporated into the new Executive Order. Executive Order 12145 extended the following provisions of laws to the Foreign Service Retirement and Disability System:

- (1) Public Law 93-260, approved April 9, 1974 (88 Stat. 76).
- (2) Public Law 93-273, approved April 26, 1974 (88 Stat. 93).
- (3) Public Law 94-166, approved December 23, 1975 (89 Stat. 1002).
- (4) Public Law 95-317, approved July 10, 1978 (92 Stat. 385).
- (5) Public Law 95-366, approved September 15, 1978 (92 Stat. 600).
- (6) Public Law 95-382, approved September 22, 1978 (92 Stat. 727).

(Continued)

[(b) Any provisions of an Executive order issued under the authority of this section shall modify, supersede, or render inapplicable, as the case may be, to the extent inconsistent therewith—

(Continued)

The text of the Foreign Service Act of 1946 shown in brackets incorporates the conforming changes described in Executive Order 12145, the text of which is as follows:

Executive Order 12145 of July 18, 1979

FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 805 of the Foreign Service Act of 1946, as added by Section 503 of Public Law 94-350 (90 Stat. 835; 22 U.S.C. 1065), in order to conform the Foreign Service Retirement and Disability System to certain amendments to the Civil Service Retirement and Disability System, it is hereby ordered as follows:

1-101. (a) The enactment (after January 1, 1974) of certain laws has affected a number of provisions of general applicability in the Civil Service Retirement and Disability System (subchapter III, Chapter 83 of Title 5 of the United States Code (or otherwise affected current or former participants, annuitants, or survivors under that System, which, immediately prior to the enactment of such laws, had been substantially identical to corresponding provisions of law affecting participants, former participants, annuitants or survivors under the Foreign Service Retirement and Disability System. Those laws are set forth at Annex I, attached hereto and made a part hereof.

(b) The provisions of the laws referred to in subsection (a) above are extended, as provided by Section 805 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1065), to the Foreign Service Retirement and Disability System in accordance with the provisions of this Order, which provisions shall modify, supersede, or render inapplicable all inconsistent prior provisions of law.

1-102. In accord with Section 1 of Public Law 93-260, Section 804(2) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1064(2)), is deemed to be amended by striking out "two years" wherever it appears and inserting in lieu thereof "one year". This amendment shall apply only in the cases of participants, former participants, or annuitants who died on or after April 9, 1974 but no annuity shall be paid or recomputed, by virtue of this amendment, for any period prior to May 1, 1974.

1-103. In accord with Section 1(b) of Public Law 95-382, Section 811 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1071), shall be deemed to be amended to provide that, "No contribution shall be required for any period for which credit is allowed to persons of Japanese ancestry for being interned or otherwise detained during World War II, as described in Section 1(a) of Public Law 95-382."

1-104. In accord with Section 1 of Public Law 93-273, and notwithstanding any other provision of Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), said Section 821 shall be deemed to be amended to provide for the payment of a minimum annuity as set forth at Section 821-1 of Annex II attached hereto and made a part hereof.

1-105. In accord with Section 2 of Public Law 93-273, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide an increase in annuities, which have been computed on the highest five consecutive years of service, as set forth at Section 821-2 of Annex II, attached hereto and made a part hereof.

1-106. In accord with Sections 1(a) and 4 of Public Law 95-317, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide for the recomputation of annuities for nonmarried annuitants as set forth at Section 821-3 of Annex II, attached hereto and made a part hereof.

1-107. (a) In accord with Section 1(c) of Public Law 95-317 the last sentence of Section 821(g) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(g)), shall be deemed to be amended to read as follows: "The annuity reduction or recomputation shall be effective the first day of the first month beginning one year after the date of marriage."

(b) The amendment made by paragraph (a) above shall apply with respect to survivor elections received by the Secretary on or after October 1, 1978.

1-108. (a) In accord with Section 2 of Public Law 95-317, Section 821(f) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(f)), shall be deemed to be amended by adding at the end thereof the following: "An annuity which is reduced under this subsection or any similar prior provisions of law shall, effective the first day of the month following the death of the beneficiary named under this subsection, be recomputed and paid as if the annuity had not been so reduced."

(b) The amendment made by paragraph (a) above shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such amendment shall accrue for any period before October 1, 1978.

1-109. In accord with Section 3 of Public Law 95-317, Section 821 of the Foreign Service Act, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide a requirement for annual notice to participants, as set forth at Section 821-4 of Annex II, attached hereto and made a part hereof.

1-110. In accord with subsection (c) and (d) of Section 2 of Public Law 95-382, Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide World War II Internment annuity credit as set forth at Section 821-5 of Annex II, attached hereto and made a part hereof.

1-111. In accord with Sections 1(a) and 2 (a) and (b) of Public Law 95-382, Section 851 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1091), shall be deemed to be amended to provide additional creditable service as set forth at Section 851-1 at Annex III attached hereto and made a part hereof.

1-112. In accord with Public Law 94-166 and Public Law 95-366, Section 864 of the

(Continued)

[(1) all provisions of law enacted prior to the effective date of the provision of such Executive order, and

(Continued)

Foreign Service Act of 1946, as amended (22 U.S.C. 1104), shall be deemed to be amended to read as set forth at Annex IV, attached hereto and made a part hereof.

1-113. Because the provisions of Executive Order No. 11952 of January 7, 1977, have been incorporated into this Order or its Annexes, Executive Order No. 11952 is revoked.

JIMMY CARTER.

THE WHITE HOUSE, July 18, 1979.

ANNEX I

1-101. Section 1 of Public Law 93-260, approved April 9, 1974 (88 Stat. 76).

1-102. Public Law 93-273, approved April 26, 1974 (88 Stat. 93).

1-103. Public Law 94-166, approved December 23, 1975 (89 Stat. 1002).

1-104. Public Law 95-317, approved July 10, 1978 (92 Stat. 382).

1-105. Public Law 95-366, approved September 15, 1978 (92 Stat. 600).

1-106. Public Law 95-382, approved September 22, 1978 (92 Stat. 727).

ANNEX II

Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), shall be deemed to be amended to provide:

821-1. *Payment of Minimum Annuity.*

821-101. The monthly rate of an annuity payable under Section 821 of the Foreign Service Act of 1946, as amended, to an annuitant, or to a survivor annuitant other than a child, shall not be less than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

821-102. The monthly rate of an annuity payable, under said Section 821, to a surviving child shall not be less than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), or three times such primary insurance amount divided by the number of surviving children entitled to an annuity, whichever is the lesser.

821-103. The provisions of this Section 821-1 shall not apply to an annuitant or to a survivor who is or becomes entitled to receive from the United States an annuity or retired pay under any other civilian or military retirement system, benefits under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*), a pension, veterans' compensation, or any other periodic payment of a similar nature, when the monthly rate thereof is equal to or greater than the smallest primary insurance amount, including any cost of living increase added to that amount, authorized to be paid from time to time under Title II of the Social Security Act (42 U.S.C. 401 *et seq.*).

821-104. The provisions of this Section 821-1 apply to all annuities, whether commenced before, on, or after August 1, 1974, but no increase in any annuity shall be paid or recomputed under this subsection for any period prior to August 1, 1974.

821-2. *Increase in Annuities.*

821-201. An annuity payable to a former participant which is based on a separation occurring prior to October 20, 1969, is increased by \$240.00.

821-202. In lieu of any increase based on an increase under subsection 201, an annuity to the surviving spouse of a participant or annuitant which is based on a separation occurring prior to October 20, 1969, is increased by \$132.00.

821-203. The provisions of this Section 821-2 shall not apply to annuities payable under Section 523(c) of Public Law 94-350 (90 Stat. 847, 22 U.S.C. 1076 note), or any similar prior provision of law, to the surviving spouse of a participant or annuitant.

821-204. The monthly rate of an annuity resulting from an increase under this Section 821-2 shall be considered as the monthly rate of annuity payable under Section 821 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076), for purposes of computing the minimum annuity as provided in Section 821-1 of this Annex.

821-205. The provisions of this subsection apply to all annuities, whether commenced before, on, or after August 1, 1974, but no increase in any annuity shall be paid or recomputed under this Section 821-2 for any period prior to August 1, 1974.

821-3. *Recomputation of Annuities for Nonmarried Annuitants.*

821-301. An annuity which is reduced under Section 821(b)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1076(b)(1)), or any similar prior provision of law shall, for each full month during which a retired participant is not married (or is remarried if there is no election in effect under the following sentence), be recomputed and paid as if the annuity had not been so reduced. Upon remarriage the retired participant may irrevocably elect during such marriage, in a signed writing received in the Department of State within one year after such remarriage, a reduction in the participant's annuity for the purpose of allowing an annuity for the participant's spouse in the event such spouse survives the participant. Such reduction shall be equal to the reduction in effect immediately before the dissolution of the previous marriage, and shall be effective the first day of the first month beginning one year after the date of the remarriage.

821-302. Except as provided in subsection 303 below, the provisions of subsection 301 above shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such provision shall accrue for any period before October 1, 1978.

821-303. The provisions in subsection 301 above shall not affect the eligibility of any individual to a survivor annuity under Section 821 of the Foreign Service Act of 1946, as amended, or the reduction therefor, in the case of an annuitant who remarried before

(Continued)



[(2) any prior provision of an Executive order issued under authority of this section.

(Continued)

October 1, 1978, unless the annuitant notifies the Department of State in a signed writing received in the Department within one year after October 1, 1978, that such annuitant does not desire the spouse of the annuitant to receive a survivor annuity in the event of the annuitant's death. Such notification shall take effect the first day of the first month after it is received in the Department.

**821-4. Annual Notice to Participants.**

The Secretary shall, on an annual basis, inform each participant of such participant's right of election under Section 821-3 of this Annex and under Section 821(g) of the Foreign Service Act of 1946, as amended by Section 1-107 of this Executive Order.

**821-5. World War II Internment Annuity Credit.**

821-501. An annuity or survivor annuity based upon the service of a participant who is of Japanese ancestry and who was interned or otherwise detained during World War II, as described in Section 851-1 of Annex III of this Executive Order, shall upon application to the Secretary, be recomputed to provide creditable service for such period of internment or detention, as provided in that Section 851-1 of Annex III of this Executive Order. Any such recomputation of an annuity shall apply with respect to months beginning more than 30 days after the date on which application for such recomputation is received by the Secretary.

821-502. The Secretary shall take such action as may be necessary and appropriate to inform individuals entitled to have any service credited by reason of internment or detention, or to have any annuity recomputed under this subsection of their entitlement to such credit or recomputation.

821-503. The Secretary shall, on request, assist any individual referred to in this Section 821-5 in obtaining from any department, agency or other instrument of the United States, such information possessed by such instrumentality as may be necessary to verify the entitlement of such individual to have any service credited by reason of internment or detention or to have any annuity recomputed under this Section.

821-504. Any department, agency, or other instrumentality of the United States which possesses any information with respect to any such internment or other detention of any participant shall, at the request of the Secretary, furnish such information to the Secretary.

ANNEX III

Section 851 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1091), shall be deemed to be amended to provide:

**851-1. Additional Creditable Service.**

851-101. A participant who is of Japanese ancestry and who, while a citizen of the United States or an alien lawfully admitted to the United States for permanent residence, was interned or otherwise detained at any time during World War II in any camp, installation, or other facility in the United States, or in any territory or possession of the United States, under any policy or program of the United States respecting individuals of Japanese ancestry which was established during World War II in the interests of national security pursuant to:

- (A) Executive Order Numbered 9066 dated February 19, 1942;
- (B) Section 67 of the Act entitled "An Act to provide a government for the Territory of Hawaii", approved April 30, 1900 (chapter 339, Fifty-sixth Congress; 31 Stat. 153);
- (C) Executive Order Numbered 9489, dated October 18, 1944;
- (D) Sections 4067 through 4070 of the Revised Statutes of the United States; or
- (E) Any other statute, rule, regulation, or order, shall be allowed credit (as civilian service) for any period during which such participant was so interned or otherwise detained after such employee became 18 years of age.

851-102. For the purpose of this Section 851-1, "World War II" means the period beginning on December 7, 1941, and ending on December 31, 1946.

851-103. The provisions of this Section 851-1 shall apply with respect to annuities which commence before, on, or after October 1, 1978, but no monetary benefit by reason of such amendments shall accrue for any period before October 1, 1978.

ANNEX IV

Section 864 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1104), shall be deemed to be amended to read:

SEC. 864. (a) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts from such annuity for such purposes as the Secretary in his sole discretion considers appropriate.

(b) (1) Payments under this title which would otherwise be made to a participant or annuitant based upon his service shall be paid (in whole or in part) by the Secretary to another person if and to the extent expressly provided for in the terms of any court decree of divorce, annulment, or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation. Any payment under this paragraph to a person bars recovery by any other person.

(2) Paragraph (1) shall only apply to payments made under this title after the date of receipt by the Secretary of written notice of such decree, order, or agreement, and such additional information and documentation as the Secretary may prescribe.

(3) As used in this subsection "court" means any court of any State or the District of Columbia.

(c) None of the moneys mentioned in this title shall be assignable, either in law or equity, except under the provisions of subsections (a) and (b) of this Section, or Section 634(c), or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

**[PART B—CONTRIBUTING TO THE FUND**

**[SEC. 811. (a)** Seven per centum of the basic salary received by each participant shall be contributed to the Fund for the payment of annuities, cash benefits, refunds, and allowances. An equal sum shall also be contributed from the respective appropriation or fund which is used for payment of his salary. The amounts deducted and withheld from basic salary together with the amounts so contributed from the appropriation or fund, shall be deposited by the Department of State in the Treasury of the United States to the credit of the Fund.

**[ (b)** Each participant shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all regular services during the period covered by such payment, except the right to the benefits to which he shall be entitled under this Act, notwithstanding any law, rule, or regulation affecting the individual's salary.

**[ (c) (1)** If an officer or employee under another retirement system for Government employees becomes a participant in the system by direct transfer, such officer or employee's total contributions and deposits that would otherwise be refundable on separation including interest accrued thereon, except voluntary contributions, shall be transferred to the Fund effective as of the date such officer or employee becomes a participant in the System. Each such officer or employee shall be deemed to consent to the transfer of such funds and such transfer shall be a complete discharge and acquittance of all claims and demands against the other Government retirement fund on account of service rendered prior to becoming a participant in the system.

**[ (2)** No officer or employee, whose contributions are transferred to the Fund in accordance with the provisions of subsection (c) (1) of this section, shall be required to make contributions in addition to those transferred, for periods of service for which required contributions were made to the other Government retirement fund, nor shall any refund be made to any such officer or employee on account of contributions made during any period to the other Government retirement fund, at a higher rate than that fixed by subsection (d) of this section.

**[ (d)** Any participant credited with civilian service after July 1, 1924 (1) for which no retirement contributions, deductions, or deposits have been made, or (2) for which a refund of such contributions, deductions, or deposits has been made which has not been redeposited, may make a special contribution to the Fund equal to the following percentages of basic salary received for such services :

Service:	Percent of basic salary
From July 1, 1924, to October 15, 1960, inclusive.....	5
From October 16, 1960, to December 31, 1969, inclusive.....	6½
On and after January 1, 1970.....	7

Notwithstanding the foregoing, a special contribution for prior nondeposit service as a National Guard technician which would be creditable under subchapter III, chapter 83, title 5, of the United States Code toward civil service retirement and for which a special contribution

has not been made, shall be equal to the special contribution for such service computed in accordance with the above schedule multiplied by the percentage of such service that is creditable under section 851. Special contributions shall include interest computed from the midpoint of each service period included in the computation, or from the date refund was paid, to the date of payment of the special contribution or commencing date of annuity, whichever is earlier. Interest shall be compounded at the rate of 4 per centum per annum to December 31, 1976, and at 3 per centum per annum thereafter. No interest shall be charged on special contributions made after the effective date of the Foreign Service Retirement Amendments of 1976 for any period of separation from Government service which began before October 1, 1956. Special contributions may be paid in installments when authorized by the Secretary.

• **[(e)]** No contributions shall be required for any periods of military or naval service. No contribution shall be required for any period for which credit is allowed to persons of Japanese ancestry for being interned or otherwise detained during World War II, as described in Section 1(a) of Public Law 95-382.<sup>3</sup>

• **[(f)]** A participant or survivor may make a special contribution any time before receipt of annuity and may authorize payment by offset against initial annuity accruals.

#### **[PART C—COMPUTATION AND PAYMENT OF ANNUITIES]**

**[SEC. 821.<sup>4</sup> (a)]** The annuity of a participant shall be equal to 2 per centum of his average basic salary for the highest three consecutive years of service multiplied by the number of years, not exceeding thirty-five, of service credit obtained in accordance with the provisions of sections 851 and 853. However, the highest three years of service shall be used in computing the annuity of any participant who serves as chief of mission and whose continuity of service as such is interrupted prior to retirement by appointment or assignment to any other position determined by the Secretary to be of comparable importance. In determining the aggregate period of service upon which the annuity is to be based, the fractional part of a month, if any, shall not be counted. The annuity shall be reduced by 10 per centum of any special contribution described in section 811(d) due for service for which no contributions were made and remaining unpaid unless the participant elects to eliminate the service involved for purposes of annuity computation.

• **[(b)(1)]** Unless elected in writing to the contrary at the time of retirement, any married participant shall receive a reduced annuity and provide a maximum survivor annuity for his or her spouse. Such a participant's annuity of any portion thereof designated in writing by the participant as the base for the survivor benefit shall be reduced by 2½ per centum of the first \$3,600 plus 10 per centum of any amount over \$3,600. If an annuitant entitled to receive a reduced annuity under this subsection dies and is survived by a spouse, a survivor annuity shall be paid to the surviving spouse equal to 55 per centum of the

<sup>3</sup> See footnote 2 on page 146.

<sup>4</sup> See footnote 2 on page 146.

full amount of the participant's annuity computed under subsection (a) of this section, or by 55 per centum of any lesser amount the annuitant designated at the time of retirement as the base for the survivor benefit.

[(2) An annuity payable from the Fund to a surviving spouse shall commence on the day after the annuitant dies and shall terminate on the last day of the month before the survivor's (A) remarriage prior to attaining age sixty, or (B) death. If a survivor annuity is terminated because of remarriage under clause (A) above, it shall be restored at the same rate commencing on the date such remarriage is terminated provided any lump sum paid upon termination of the annuity is returned to the Fund.

[(c) (1) If an annuitant dies and is survived by a wife or husband and by a child or children, in addition to the annuity payable to the surviving wife or husband, there shall be paid to or on behalf of each child an annuity equal to the smallest of: (i) \$900; or (ii) \$2,700 divided by the number of children.

[(2) If an annuitant dies and is not survived by a wife or husband but by a child or children, each surviving child shall be paid an annuity equal to the smallest of: (i) \$1,080; or (ii) \$3,240 divided by the number of children.

[(d) If a surviving wife or husband dies or the annuity of a child is terminated, the annuities of any remaining children shall be recomputed and paid as though such wife, husband, or child had not survived the participant. If the annuity to a surviving child is initiated or resumed, the annuities of any other children shall be recomputed and paid from that date as though the annuities to all currently eligible children in the family were then being initiated.

[(e) The annuity payable to a child under subsection (c) or (d) of this section shall begin on the day after the participant dies or if the child is not then qualified, on the first day of the month in which the child becomes eligible. A child's annuity shall terminate on the last day of the month which precedes the month in which eligibility ceases.

[(f) At the time of retirement an unmarried participant may elect to receive a reduced annuity and to provide for an annuity equal to 55 per centum of the reduced annuity payable after his or her death to a beneficiary whose name shall be designated in writing to the Secretary. The annuity payable to a participant making such election shall be reduced by 10 per centum of an annuity computed as provided in paragraph (a) of this section and by 5 per centum of an annuity so computed for each full five years the person designated is younger than the retiring participant, but such total reduction shall not exceed 40 per centum. No such election of a reduced annuity payable to a beneficiary shall be valid until the participant shall have satisfactorily passed a physical examination as prescribed by the Secretary. The annuity payable to a beneficiary under the provisions of this subsection shall begin on the day after the annuitant dies and shall terminate on the last day of the month preceding the survivor's death.

[(g) An annuitant who was unmarried at retirement and who later

marries may, within one year after such marriage, irrevocably elect in writing a reduced annuity with benefit to any surviving spouse who qualifies under section 804(2). Receipt by the Secretary of notice of an election under this subsection voids prospectively any election previously made under subsection (f). The reduction in annuity required by an election under this subsection shall be computed and the amount of the survivor annuity shall be determined as if the election were made under subsection (b) (1). The annuity reduction or recomputation shall be effective the first day of the month after notice of the election is received by the Secretary.

• [(h) A surviving spouse shall not become entitled to a survivor annuity or to the restoration of a survivor annuity payable from the Fund unless the survivor elects to receive it instead of any other survivor annuity to which he or she may be entitled under this or any other retirement system for Government employees.

• [(i) Any married annuitant who reverts to retired status with entitlement to a supplemental annuity under section 871 shall, unless the annuitant elects in writing to the contrary at that time, have the supplemental annuity reduced by 10 per centum to provide a supplemental survivor annuity for his or her spouse. Such supplemental survivor annuity shall be equal to 55 per centum of the annuitant's supplemental annuity and shall be payable to a surviving spouse to whom the annuitant was married at the time of reversion to retired status or to whom the annuitant had been married for at least two years at the time of death or who is the parent of a child born of the marriage.

#### **[PAYMENT OF ANNUITY**

[SEC. 822. (a) Except as otherwise provided, the annuity of a former participant who has met the eligibility requirements for annuity shall commence on the day after separation from the Service or on the day after pay ceases. The annuity of a former participant who is entitled to a deferred annuity under section 834 or under any other section of this Act shall begin on the day he or she reaches age sixty.

• [(b) The annuity to a survivor shall become effective as otherwise specified but shall not be paid until the survivor submits an application therefor supported by such proof of eligibility as the Secretary may require. If such application or proof of eligibility is not submitted during an otherwise eligible person's lifetime, no annuity shall be due or payable to his or her estate.

• [(c) An individual entitled to annuity from the Fund may decline to accept all or any part of the annuity by submitting a signed waiver to the Secretary. The waiver may be revoked in writing at any time. Payment of the annuity waived may not be made for the period during which the waiver was in effect.

[(d) Recovery of overpayments under this title may not be made from an individual when, in the judgment of the Secretary, the individual is without fault, and recovery would be against equity and good conscience or administratively infeasible.

**[PART D—BENEFITS ACCRUING TO CERTAIN PARTICIPANTS**

**[RETIREMENT FOR DISABILITY OR INCAPACITY—PHYSICAL EXAMINATION—RECOVERY**

**[SEC. 831. (a)** Any participant who has five years of service credit toward retirement under the System, excluding military or naval service, and who becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or wilful misconduct on his part, shall, upon his own application or upon order of the Secretary, be retired on an annuity computed as prescribed in section 821. If the disabled or incapacitated participant has less than twenty years of service credit toward his retirement under the System at the time he is retired, his annuity shall be computed on the assumption that he has had twenty years of service, but the additional service credit that may accrue to a participant under this provision shall in no case exceed the difference between his age at the time of retirement and the mandatory retirement age applicable to his class in the Service.

**[(b)** In each case, the participant shall be given a physical examination by one or more duly qualified physicians or surgeons designated by the Secretary to conduct examinations, and disability shall be determined by the Secretary on the basis of the advice of such physicians or surgeons. Unless the disability is permanent, like examinations shall be made annually until the annuitant has reached the statutory mandatory retirement age for his class in the Service. If the Secretary determines, on the basis of the advice of one or more duly qualified physicians or surgeons conducting such examinations that an annuitant has recovered to the extent that he can return to duty, the annuitant may apply for reinstatement or reappointment in the Service within one year from the date his recovery is determined. Upon application the Secretary shall reinstate any such recovered disability annuitant in the class in which he was serving at time of retirement, or the Secretary may, taking into consideration the age, qualifications, and experience of such annuitant, and the present class of his contemporaries in the Service, appoint him or in the case of an annuitant who is a former Foreign Service officer, recommend that the President appoint him, by and with the advice and consent of the Senate, to a class higher than the one in which he was serving prior to retirement. Payment of the annuity shall continue until a date six months after the date of the examination showing recovery or until the date of reinstatement or reappointment in the Service, whichever is earlier. Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Fund. If the annuitant fails to submit to examination as required under this section, payment of the annuity shall be suspended until continuance of the disability is satisfactorily established.

**[(c)** If a recovered disability annuitant whose annuity is discontinued is for any reason not reinstated or reappointed in the Service, he shall be considered to have been separated within the meaning of section 834 as of the date he was retired for disability and he shall, after the discontinuance of the disability annuity, be entitled to the

benefit of that section or of section 841 except that he may elect voluntary retirement in accordance with the provisions of section 636 if he can qualify under its provisions.

[(d) No participant shall be entitled to receive an annuity under this Act and compensation for injury or disability to himself or herself under subchapter I of chapter 81, title 5, United States Code, covering the same period of time except that a participant may simultaneously receive both an annuity under this section and scheduled disability payments under section 8107 of title 5, United States Code. This provision shall not bar the right of any claimant to the greater benefit conferred by either this Act or such subchapter for any part of the same period of time. Neither this provision nor any provision of such subchapter shall be so construed as to deny the right of any participant to receive an annuity under this Act and to receive concurrently any payment under such subchapter by reason of the death of any other person.

[(e) Notwithstanding any provision of law to the contrary, the right of any person entitled to an annuity under this Act shall not be affected because such person has received an award of compensation in a lump sum under section 8135 of title 5, United States Code except that where such annuity is payable on account of the same disability for which compensation under such section has been paid, so much of such compensation as has been paid for any period extended beyond the date such annuity becomes effective, as determined by the Secretary of Labor, shall be refunded to the Department of Labor, to be paid into the Federal Employees' Compensation Fund. Before such person shall receive such annuity he shall (1) refund to the Department of Labor the amount representing such computed payments for such extended period, or (2) authorize the deduction of such amount from the annuity payable to him under this Act, which amount shall be transmitted to such Department for reimbursement to such Fund. Deductions from such annuity may be made from accrued and accruing payments, or may be prorated against and paid from accruing payments in such manner as the Secretary of Labor shall determine, whenever he finds that the financial circumstances of the annuitant are such as to warrant such deferred refunding.

#### [(DEATH IN SERVICE

[SEC. 832. (a) If a participant dies and no claim for annuity is payable under the provisions of this Act, the lump-sum credit shall be paid in accordance with section 841.

[(b) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separation or retirement from the Service and is survived by a spouse, such surviving spouse shall be entitled to an annuity equal to 55 per centum of the annuity computed in accordance with the provisions of subsection (e) of this section and of section 821(a) and if the participant had less than three years creditable civilian service at the time of death, the survivor annuity shall be computed on the basis of the average salary for the entire period of such service.

[(c) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separa-

tion or retirement from the Service and is survived by a wife or a husband and a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c) (1) and (d) of section 821.

[(d) If a participant who has at least eighteen months of civilian service credit toward retirement under the system dies before separation or retirement from the Service and is not survived by a wife or husband, but by a child or children, each surviving child shall be entitled to an annuity computed in accordance with subsections (c) (2) and (d) of section 821.

[(e) If, at the time of his or her death, the participant had less than twenty years of service credit toward retirement under the System, the annuities payable in accordance with paragraph (b) of this section shall be computed in accordance with the provisions of section 821 on the assumption he or she has had twenty years of service, but the additional service credit that may accrue to a deceased participant under this provision shall in no case exceed the difference between his or her age on the date of death and the mandatory retirement age applicable to his or her class in the Service. In all cases arising under paragraphs (b), (c), (d), or (e) of this section, it shall be assumed that the deceased participant was qualified for retirement on the date of his death.

[(f) If an annuitant who elected a reduced annuity dies in service after being recalled under section 520(b) and is survived by a spouse entitled to a survivor annuity based on such an election, such survivor annuity shall be computed as if the recall service had otherwise terminated on the day of death and the deceased's annuity had been resumed in accordance with section 871. If such a death occurs after the annuitant had completed sufficient recall service to attain eligibility for a supplemental annuity, a surviving spouse, in addition to any other benefits, shall be entitled to elect, in lieu of a refund of retirement contributions made during the recall service, a supplemental survivor annuity computed and paid under section 821(i) as if the recall service had otherwise terminated. If the annuitant had completed sufficient recall service to attain eligibility to have his or her annuity determined anew, a surviving spouse may elect, in lieu of any other benefit under this title, to have the annuitant's rights redetermined and to receive a survivor annuity computed under subsection (b) of this section on the basis of the annuitant's total service.

[(g) Annuities that become payable under this section shall commence, terminate, and be resumed in accordance with subsection (b) (2), (e), or (h) of section 821, as appropriate.

#### [DISCONTINUED SERVICE RETIREMENT

[SEC. 834. Any participant who voluntarily separates from the Service after obtaining at least five years of service credit toward retirement, under the System, excluding military or naval service may, upon separation from the Service or at any time prior to becoming eligible for an annuity, elect to have his contributions to the Fund returned to him in accordance with the provisions of section 841, or to leave his contributions in the Fund and receive an annuity, computed as prescribed in section 821, commencing at the age of sixty years.



**[PART E—LUMP-SUM PAYMENTS**

**[SEC. 841. (a)** "Lump-sum credit" as used in this title means the compulsory and special contributions to a participant's or former participant's credit in the Fund plus interest thereon compounded at 4 per centum per annum to the date of separation or December 31, 1976, whichever is earlier, and after such date for a participant who separates from the Service after completing at least one year of civilian service and before completing five years of such service, at the rate of 3 per centum per annum to the date of separation. Interest shall not be paid for a fractional part of a month in the total service or on compulsory and special contributions from an annuitant for recall service or other service performed after the date of separation which forms the basis for annuity.

**[ (b)** Whenever a participant becomes separated from the Service without becoming eligible for an annuity or a deferred annuity in accordance with the provisions of this Act, the lump-sum credit shall be paid to the participant.

**[ (c)** Whenever an annuitant becomes separated from the Service following a period of recall service without becoming eligible for a supplemental or recomputed annuity under section 871, the annuitant's compulsory contributions to the Fund for such service together with any special contributions the annuitant may have made for other service performed after the date of separation from the Service which forms the basis for annuity, shall be returned.

**[ (d)** If all annuity rights under this title based on the service of a deceased participant or annuitant terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid in the order of precedence shown in subsection (g) of this section.

**[ (e)** If a participant or former participant dies and is not survived by a person eligible for an annuity under this title or by such a person or persons all of whose annuity rights terminate before a claim for survivor annuity is filed, the lump-sum credit shall be paid in accordance with subsection (g) of this section.

**[ (f)** If an annuitant who was a former participant dies, annuity accrued and unpaid, shall be paid in accordance with subsection (g) of this section.

**[ (g)** Payments authorized in subsections (d) through (f) of this section shall be paid in the following order of precedence to such person or persons surviving the participant and alive on the date entitlement to the payment arises, upon the establishment of a valid claim therefor, and such payment shall be a bar to recovery by any other person :

**[ (1)** to the beneficiary or beneficiaries last designated by the participant before or after retirement in a signed and witnessed writing received by the Secretary prior to the participant's death, for which purpose a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed shall have no force or effect;

**[ (2)** if there be no such beneficiary, to the surviving wife or husband of such participant;

**[ (3)** if none of the above, to the child or children of such par-

participant (including adopted and natural children but not step-children) and descendants of deceased children by representation;

[(4) if none of the above, to the parents of such participant or the survivor of them;

[(5) if none of the above, to the duly appointed executor or administrator of the estate of such participant; and

[(6) if none of the above, to other next of kin of such participant as may be determined in the judgment of the Secretary to be legally entitled thereto, except that no payment shall be made pursuant to this paragraph (6) until after the expiration of thirty days from the death of the participant or annuitant.

[(h) Annuity accrued and unpaid on the death of a survivor annuitant shall be paid in the following order of precedence, and the payment bars recovery by any other person: First, to the duly appointed executor or administrator of the estate of the survivor annuitant; second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of such survivor annuitant, to such person as may be determined by the Secretary to be entitled under the laws of the survivor annuitant's domicile at the time of death.

[(i) Amounts deducted and withheld from basic salary of a participant under section 811 from the beginning of the first pay period after the participant has completed thirty-five years of service computed under sections 851 and 853, but excluding service credit for unused sick leave under subsection (b) of section 851, together with interest on the amounts at the rate of 3 per centum a year compounded annually from the date of the deduction to the date of retirement or death, shall be applied toward any special contribution due under subsection (d) of section 811, and any balance not so required shall be refunded in a lump sum to the participant after separation, or in the event of a death in service, to a beneficiary in the order of precedence specified in subsection (g) of this section.

#### **[PART F—PERIOD FOR SERVICE FOR ANNUITIES**

##### **[CREDITABLE SERVICE**

[SEC. 851.<sup>5</sup> (a) Except as otherwise specified by law, all periods of civilian and military and naval service and periods of absence and separation therefrom completed by a participant through the date of final separation from the Service that would be creditable, as determined by the Secretary, under section 8332 of title 5, United States Code, toward retirement under the Civil Service Retirement and Disability System, if performed by an employee under that system, shall be creditable for purposes of this title. Conversely, any such service performed after December 31, 1976, that is not creditable under specified conditions under section 8332 of title 5, United States Code, shall be excluded under this title under the same conditions.

[(b) In computing any annuity under this title, the total service of a participant who retires on an immediate annuity or who dies leaving a survivor or survivors entitled to annuity includes, without regard

<sup>5</sup> See footnote 2 on page 146.

to the thirty-five-year limitation imposed by section 821(a), the days of unused sick leave to his credit except that these days will not be counted in determining average basic salary or annuity eligibility under this title. A contribution to the Fund shall not be required from a participant for this service credit.

[(c) (1) A participant who enters on approval leave without pay to serve as a full-time officer or employee of an organization composed primarily of Government employees may, within sixty days after entering on that leave without pay, file with the employing agency an election to receive full retirement credit for such periods of leave without pay and arrange to pay concurrently into the Fund through the employing agency, amounts equal to the retirement deductions and agency contributions on the Foreign Service salary rate that would be applicable if the participant were in a pay status. If the election and all payments provided by this subsection are not made for the periods of such leave without pay occurring after the effective date of this subsection, the participant may not receive any credit for such periods of leave without pay occurring after such date.

[(2) A participant may make a special contribution for any period or periods of approved leave without pay while serving, before the effective date of this subsection, as a full-time officer or employee of an organization composed primarily of Government employees. Any such contribution shall be based upon the suspended Foreign Service salary rate, and shall be computed in accordance with section 811. A participant who makes such a contribution shall be allowed full retirement credit for the period or periods of leave without pay. If this contribution is not made, up to six months' retirement credits shall be allowed for such periods of leave without pay each calendar year.

[(d) A participant who has received a refund of retirement contributions (which has not been repaid) under this or any other retirement system for Government employees covering service which may be creditable may make a special contribution for such service pursuant to section 811. Credit may not be allowed for service covered by the refund unless the special contribution is made.

[(e) No credit in annuity computation shall be allowed for any period of civilian service for which a participant made retirement contributions to another retirement system for Government employees unless (1) the right to any annuity under the other system which is based on such service is waived, and (2) a special contribution is made covering such service pursuant to section 811.

[(f) A participant who during the period of a war, or of a national emergency as proclaimed by the President or declared by the Congress, leaves the Service to enter the military service is deemed, for the purpose of this title, as not separated from the Service unless the participant applies for and receives a lump-sum payment under section 841. However, the participant is deemed to be separated from the Service after the expiration of five years of such military service.

#### EXTRA CREDIT FOR SERVICE AT UNHEALTHFUL POSTS

[SEC. 853. The President may from time to time establish a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to

January 1, 1900, at such posts inclusive of regular leaves of absence, of participants thereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service, but no such extra credit for service at such unhealthful posts shall be credited to any participant who shall have been paid a salary differential in accordance with section 443, as amended, for such service performed subsequent to the date of enactment of the Foreign Service Act Amendments of 1955.

**[RECOMPUTATION OF ANNUITIES OF CERTAIN FORMER PARTICIPANTS**

**[SEC. 855.** The annuity of each former participant under the System, who retired prior to July 28, 1956, and who at the time of his retirement had creditable service in excess of thirty years, shall be recomputed on the basis of actual years of creditable service not in excess of thirty-five years. Service which was not creditable under the System on the date a former participant retired, shall not be included as creditable service for the purpose of this recomputation. The annuities payable to such persons shall, when recomputed, be paid at the rates so determined, but no such recomputation or any other action taken pursuant to this section shall operate to reduce the rate of the annuity any such person is entitled to receive under the System.

**[PART G—MONEYS**

**[ESTIMATE OF APPROPRIATIONS NEEDED**

**[SEC. 861.** The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the Fund, and shall make actuarial valuations of such funds at intervals of five years, or oftener if deemed necessary by him. The Secretary of State may expend from money to the credit of the Fund an amount not exceeding \$5,000 per annum for the incidental expenses necessary in administering the provisions of this title, including actuarial advice.

**[INVESTMENT OF FUND :**

**[SEC. 863.** The Secretary of the Treasury shall invest from time to time in interest-bearing securities of the United States such portions of the Fund as in his judgment may not be immediately required for the payment of annuities, cash benefits, refunds, and allowances, and the income derived from such investments shall constitute a part of such Fund.

**[ATTACHMENT OF MONEYS**

**[SEC. 864.<sup>a</sup>** None of the moneys mentioned in this title shall be assignable either in law or equity, or be subject to execution, levy, attachment, garnishment, or other legal process, except as provided in section 634(c).

<sup>a</sup> See footnote 2 on page 146.

**[PAYMENTS FOR FUTURE BENEFITS]**

**[SEC. 865. (a) Any statute which authorizes—**

**[(1) new or liberalized benefits payable from the Fund, including annuity increases other than under section 882;**

**[(2) extension of the benefits of the System to new groups of employees; or**

**[(3) increases in salary on which benefits are computed;**  
is deemed to authorize appropriations to the Fund to finance the unfunded liability created by that statute, in thirty equal annual installments with interest computed at the rate used in the then most recent valuation of the System and with the first payment thereof due as of the end of the fiscal year in which each new or liberalized benefit, extension of benefits, or increase in salary is effective.

**[(b) There is authorized to be appropriated to the Fund for each fiscal year an amount equal to the amount of the Foreign Service normal cost for that year which is not met by contributions to the Fund under section 811(a).**

**[UNFUNDED LIABILITY OBLIGATIONS]**

**[SEC. 866. At the end of each fiscal year, the Secretary shall notify the Secretary of the Treasury of the amount equivalent to (1) interest on the unfunded liability computed for that year at the interest rate used in the then most recent valuation of the System, and (2) that portion of disbursement for annuities for that year which the Secretary estimates is attributable to credit allowed for military service. Before closing the accounts for each fiscal year, the Secretary of the Treasury shall credit to the Fund, as a Government contribution, out of any money in the Treasury of the United States not otherwise appropriated, the following percentages of such amounts: 10 per centum for 1971; 20 per centum for 1972; 30 per centum for 1973; 40 per centum for 1974; 50 per centum for 1975; 60 per centum for 1976; 70 per centum for 1977; 80 per centum for 1978; 90 per centum for 1979; and 100 per centum for 1980 and for each fiscal year thereafter. The Secretary shall report to the President and to the Congress the sums credited to the Fund under this section.**

**[(b) The provisions of section 866 of the Foreign Service Act of 1946, as contained in the amendment made by subsection (a) of this section, shall become effective at the beginning of the fiscal year which ends on June 30, 1971.**

**[PART H—ANNUITANTS RECALLED, REINSTATED OR REAPPOINTED IN THE SERVICE OR REEMPLOYED IN THE GOVERNMENT]**

**[ANNUITY ADJUSTMENT FOR RECALL SERVICE]**

**[SEC. 871. Any annuitant recalled to duty in the Service in accordance with the provisions of section 520(b) shall, while so serving, be entitled in lieu of annuity to the full salary of the class in which serving. During such service, the recalled annuitant shall make contributions to the Fund in accordance with the provisions of section 811. On the day following termination of the recall service, the former**

annuity shall be resumed adjusted by any cost-of-living increases under section 882 that became effective during the recall period. If the recall service lasts less than one year, the annuitant's contributions to the Fund during recall service shall be refunded in accordance with section 841. If the recall service lasts more than one year, the annuitant may, in lieu of such refund, elect a supplemental annuity computed under section 821 on the basis of service credit and average salary earned during the recall period irrespective of the number of years of service credit previously earned. If the recall service continues for at least five years, the annuitant may elect to have his or her annuity determined anew under section 821 in lieu of any other benefits under this section. Any annuitant who is recalled under section 520(b) may, upon written application, count as recall service any prior service that is creditable under section 851 that was performed after the separation upon which his or her annuity is based.

#### **[REEMPLOYMENT]**

**[SEC. 872. (a)]** Notwithstanding any other provision of law, any officer or employee of the Service, who has retired under this Act, as amended, and is receiving an annuity pursuant thereto, and who is reemployed in the Federal Government service in any appointive position either on a part-time or full-time basis, shall be entitled to receive the salary of the position in which he is serving plus so much of his annuity payable under this Act, as amended, which when combined with such salary does not exceed during any calendar year the basic salary such officer or employee was entitled to receive under section 412 or 415 of the Act, as amended, on the date of his retirement from the Service. Any such reemployed officer or employee who receives salary during any calendar year in excess of the maximum amount which he may be entitled to receive under this paragraph shall be entitled to such salary in lieu of benefits hereunder.

**[(b)]** When any such retired officer or employee of the Service is reemployed, the employer shall send a notice to the Department of State of such reemployment together with all pertinent information relating thereto, and shall pay directly to such officer or employee the salary of the position in which he is serving.

**[(c)]** In the event of any overpayment under this section, such overpayment shall be recovered by withholding the amount involved from the salary payable to such reemployed officer or employee, or from any other moneys, including his annuity, payable in accordance with the provisions of this title.

#### **[PART I—VOLUNTARY CONTRIBUTIONS]**

**[SEC. 881. (a)]** The Voluntary contribution account shall be the sum of unrefunded amounts heretofore voluntarily contributed by any participant or former participant under this section or under a prior corresponding provision of law, plus interest compounded at the rate of 3 per centum per annum to date of separation from the Service or in case of a participant or former participant separated with entitlement to a deferred annuity to the date the voluntary contribution account is claimed, or to the commencing date fixed for the deferred

annuity or to the date of death, whichever is earlier. A participant's or former participant's account shall, effective on the date the participant becomes eligible for an annuity or a deferred annuity and at the participant's election, be—

- [(1) returned to him in a lump sum; or
- [(2) used to purchase an additional life annuity; or
- [(3) used to purchase an additional life annuity for himself and to provide for a cash payment on his death to a beneficiary whose name shall be notified in writing to the Secretary by the participant; or
- [(4) used to purchase an additional life annuity for himself and a life annuity commencing on his death payable to a beneficiary whose name shall be notified in writing to the Secretary by the participant with a guaranteed return to the beneficiary or his legal representative of an amount equal to the cash payment referred to in paragraph 3.

[(b) The benefits provided by subparagraphs 2, 3, or 4 of paragraph (a) of this section shall be actuarially equivalent in value to the payment provided for by paragraph (a)(1) of this section and shall be calculated upon such tables of mortality as may be from time to time prescribed for this purpose by the Secretary of the Treasury.

[(c) The first annuity increase under this section after the effective following receipt of an application therefor from a present or former participant provided application is filed prior to payment of any additional annuity. If not sooner paid, the account shall be paid at such time as the participant separates from the Service for any reason without entitlement to an annuity, or a deferred annuity or at such time as a former participant dies or withdraws compulsory contributions to the Fund. In the case of death, the account shall be paid in the order of precedence specified in section 841 (g).

#### [PART J—COST-OF-LIVING ADJUSTMENTS OF ANNUITIES

[SEC. 882. (a) A cost-of-living annuity increase shall become effective under this section on the effective date of each such increase under section 8340(b) of title 5, United States Code. Each such increase shall be applied to each annuity payable from the Fund which has a commencing date not later than the effective date of the increase.

[(b) The first annuity increase under this section after the effective date of this paragraph shall equal the per centum rise in the price index, adjusted to the nearest one-tenth of 1 per centum, between the month last used to establish an increase under this section and the base month used to establish the concurrent increase under section 8340(b) of title 5, United States Code. Each subsequent annuity increase under this section shall be identical to the corresponding percentage increase under section 8340(b) of title 5, United States Code.

[(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the Fund as of the effective date of an increase except as follows:

- [(1) An annuity, except a deferred annuity under section 834 or any other section of this Act, payable from the Fund to a participant who retires and receives an immediate annuity, or to

a surviving spouse of a deceased participant who dies in service or who dies after being separated under the provisions of section 634(b) (2), which has a commencing date after the effective date of the then last preceding general annuity increase under this section shall not be less than the annuity which would have been payable if the commencing date of such annuity had been the effective date of such last preceding increase. In the administration of this paragraph, the number of days of unused sick leave to an employee's or deceased employee's credit on the effective date of the then last preceding general annuity increase under this section shall be deemed to be equal to the number of days of unused sick leave to his or her credit on the day of separation from the Service.

[(2) Effective from its commencing date, an annuity payable from the Fund to an annuitant's survivor, except a child entitled under section 821 (c) or 832 (c) or (d), shall be increased by the total per centum increase the annuitant was receiving under this section at death.

[(3) For purposes of computing or recomputing an annuity to a child under section 821 (c) or (d) or 832 (c) or (d), the items \$900, \$1,080, \$2,700 and \$3,240 appearing in section 821 (c) shall be increased by the total per centum increases by which corresponding amounts are being increased under section 8340 of title 5, United States Code, on the date the child's annuity becomes effective.

[(d) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

[(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar, except such installment shall after adjustment reflect an increase of at least \$1.

[(f) Effective on the first day of the second month which begins after the effective date of the Foreign Service Retirement Amendments of 1976 or on the commencing date of an annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity resulted from the death—

[(1) before the effective date of the Foreign Service Retirement Amendments of 1976, of (A) a participant, or (B) a former participant entitled to benefits under section 634(b) ; or

[(2) of an annuitant who, prior to the effective date of the Foreign Service Retirement Amendments of 1976, elected a reduced annuity under this or any other Act in order to provide a spouse's survivor annuity ; shall be increased by 10 per centum.

## **[TITLE IX—ALLOWANCES AND BENEFITS**

### **[PART A—ALLOWANCES AND SPECIAL ALLOTMENTS**

#### **[REPRESENTATION ALLOWANCES**

[SEC. 901. In accordance with such regulations as the President may prescribe and notwithstanding the provisions of section 1765 of the Revised Statutes (5 U.S.C. 70), the Secretary is authorized to



grant to any officer or employee of the Service who is a citizen of the United States allowances in order to provide for the proper representation of the United States by officers or employees of the Service.

**[PART B—TRAVEL AND RELATED EXPENSES**

**[GENERAL PROVISIONS**

**[SEC. 911.** The Secretary may, under such regulations as he shall prescribe, pay—

**[(1)** the travel expenses of officers and employees of the Service, including expenses incurred while traveling pursuant to orders issued by the Secretary in accordance with the provisions of section 933 with regard to the granting of home leave;

**[(2)** the travel expenses of the members of the family of an officer or employee of the Service when proceeding to or returning from his post of duty; accompanying him on authorized home leave; accompanying him for representational purposes on authorized travel within the country of his assignment or, at the discretion of the Secretary, outside the country of his assignment, but in no case to exceed one member of his family; or otherwise traveling in accordance with authority granted pursuant to the terms of this or any other Act;

**[(3)** the cost of transporting the furniture and household and personal effects of an officer or employee of the Service to his successive posts of duty and, on the termination of his services, to the place where he will reside;

**[(4)** the cost of packing and unpacking, transportation to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Service, when he is absent from his post of assignment under orders, or when he is assigned to a post to which he cannot take or at which he is unable to use such furniture and household and personal effects, or when it is in the public interest or more economical to authorize storage; but in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

**[(5)** the cost of packing and unpacking, transporting to and from a place of storage, and storing the furniture and household and personal effects of an officer or employee of the Service in connection with assignment or transfer to a new post, from the date of his departure from this last post or from the date of his departure from his place of residence in the case of a new officer or employee and for not to exceed three months after arrival at the new post, or until the establishment of residence quarters, whichever shall be shorter; and in connection with separation of an officer or employee of the Service, the cost of packing and unpacking, transporting to and from a place of storage, and storing for a period not to exceed three months, his furniture and household and personal effects; not in no instance shall the weight or volume of the effects stored together with the weight or volume of the effects transported exceed the maximum limitations fixed by regulations, when not otherwise fixed by law;

[(6) the travel expenses of the members of the family and the cost of transporting the personal effects and automobile of an officer or employee of the Service, whenever the travel of such officer or employee is occasioned by changes in the seat of the government whose capital is his post;

[(7) the travel expenses and transportation costs incident to the removal of the members of the family of an officer or employee of the Service and his furniture and household and personal effects, including automobiles, from a post at which, because of prevalence of disturbed conditions, there is imminent danger to the life and property, and the return of such persons, furniture, and effects to such post upon the cessation of such conditions; or to such other post as may in the meantime have become the post to which such officer or employee has been assigned;

[(8) the cost of preparing and transporting to their former homes in the continental United States or to a place not more distant, the remains of an officer or employee of the Service who is a citizen of the United States and of the members of his family who may die abroad or while in travel status;

[(9) the travel expenses of officers and employees of the Service who are citizens of the United States, and members of their families, while serving at posts specifically designated by the Secretary for purposes of this paragraph, for rest and recuperation to other locations abroad having different environmental conditions than those at the post at which such officers and employees are serving or to the United States, provided that such travel expenses shall be limited to the cost for each officer or employee and members of his family of one round trip during any continuous two-year tour unbroken by home leave and two round trips during any continuous three-year tour unbroken by home leave;

[(10) the travel expenses of members of the family accompanying, preceding, or following an officer or employee if, while he is en route to or from a post of assignment, he is ordered temporarily for orientation and training or is given other temporary duty;

[(11) the travel expenses of officers and employees of the Service for up to two round trips each year for purposes of family visitation in situations where the family of the officer or employee is prevented by official order from accompanying such officer or employee to, or has been ordered evacuated from, his assigned post because of danger from hostile activity, except that, with respect to any such officer or employee whose dependents are located abroad, the Secretary may authorize such additional trips as he deems appropriate not to exceed the equivalent cost of two round trips of less than first class to the District of Columbia, and the travel expenses of officers or employees stationed abroad (or their dependents located abroad), for purposes of family visitation in emergency situations involving personal hardship: *Provided*, That the facilities of the Military Airlift Command shall be utilized whenever possible for travel authorized under this section; and

[(12) without regard to rates provided under the authority of section 5702 of title 5, United States Code, the travel expenses

of employees of the Department on protective security missions within the United States territories and possessions, the Commonwealth of Puerto Rico, and the Canal Zone, at not to exceed the cost of lodging plus \$24 per day.

**[LOAN OF HOUSEHOLD FURNISHINGS AND EQUIPMENT**

**[SEC. 912.** The Secretary may, if he shall find it in the interest of the Government to do so as a means of eliminating transportation costs, provide officers and employees of the Service with basic household furnishings and equipment for use on a loan basis in personally owned or leased residences.

**[TRANSPORTATION OF MOTOR VEHICLES**

**[SEC. 913.** The Secretary may, notwithstanding the provisions of any other law, transport for or on behalf of an officer or employee of the Service, a privately owned motor vehicle in any case in which he shall determine that water, rail, or air transportation of the motor vehicle is necessary or expedient for all or any part of the distance between points of origin and destination. Not more than one motor vehicle of any such officer or employee may be transported under authority of this section during any four-year period, except that, as a replacement for such motor vehicle, one additional motor vehicle of any such officer or employee may be so transported during such period upon approval, in advance, by the Secretary and upon a determination, in advance, by the Secretary that such replacement is necessary for reasons beyond the control of the officer or employee and is in the interest of the Government. After the expiration of a period of four years following the date of transportation under authority of this section of a privately owned motor vehicle of any officer or employee who has remained in continuous service outside the continental United States (excluding Alaska and Hawaii) during such period, the transportation of a replacement for such motor vehicle for such officer or employee may be authorized by the Secretary in accordance with this section.

**[USE OF GOVERNMENT OWNED OR LEASED VEHICLES**

**[SEC. 914.** Notwithstanding the provisions of section 5 of the Act of July 16, 1914, as amended (5 U.S.C. 78), the Secretary may authorize any principal officer to approve the use of Government owned or leased vehicles located at his post for transportation of United States Government employees and their dependents when public transportation is unsafe or not available.

**[PART C—POST EMPLOYEE SERVICES**

**[SEC. 921. (a)** The Secretary may, under such regulations as he may prescribe, establish and maintain emergency commissary or mess services, in such places abroad where, in his judgment, such services are necessary temporarily to insure the effective and efficient performance of the duties and responsibilities of the Service, such services to

be available to the officers and employees of all Government agencies located in any such places abroad. Reimbursements incident to the maintenance and operation of commissary or mess service shall be at not less than cost as determined by the Secretary and shall be used as working funds: *Provided*, That an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.

[(b) The Secretary, under such regulations as he may prescribe, may authorize and assist in the establishment, maintenance, and operation by officers and employees of the Service of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the United States for use by its diplomatic and consular missions. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292-300), and section 13 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (22 U.S.C. 2684), may be utilized by the Secretary in providing such assistance. Services and facilities established under this subsection shall be made available, insofar as practicable, to officers and employees of other Government agencies and their dependents who are stationed abroad. Such services and facilities shall not be established in localities where another United States agency operates similar services or facilities unless the Secretary determines that such additional services or facilities are necessary.

[(c) Charges at any post abroad for a service or facility authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any Government agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.

#### [PART D—LEAVES OF ABSENCE

##### [ORDERING RETURN OF PERSONNEL TO UNITED STATES ON LEAVES OF ABSENCE

[SEC. 933. (a) The Secretary may order to the continental United States, its territories and possessions, on statutory leave of absence any officer or employee of the Service who is a citizen of the United States upon completion of eighteen months' continuous service abroad and shall so order as soon as possible after completion of three years of such service.

[(b) While in the continental United States, its territories and possessions, on leave, the service of any officer or employee shall be available for such work or duties in the Department or elsewhere as the Secretary may prescribe, but the time of such work or duties will not be counted as leave.

##### [RESERVE OFFICERS ASSIGNED TO THE SERVICE

[SEC. 934. (a) A Reserve officer, assigned to the Service from any Government agency shall, notwithstanding the provisions of any other law, be granted annual leave of absence and sick leave of absence in

accordance with the provisions of part D of this title during the period of his assignment.

[(b) Under such regulations as the President may prescribe, a person assigned to the Service as a Reserve officer from any Government agency may, notwithstanding the provisions of the Act of December 21, 1944 (58 Stat. 845; 5 U.S.C. 61b), transfer to the Service any annual or sick leave of absence standing to his credit at the time of his assignment to the Service. On his return to the agency by which he is regularly employed, he may transfer the aggregate of his accumulated and current annual and sick leave to that agency but the amount of leave so transferred shall not exceed the maximum which an officer or employee of the agency to which he is returning may have to his credit on the date of his return.

#### [(TRANSFER OF LEAVE OF ABSENCE

[SEC. 935. Under such regulations as the President may prescribe an officer or employee of the Service who resigns from the Service in order to accept an appointment in any Government agency may transfer to such Government agency any annual or sick leave of absence standing to his credit at the time of his resignation from the Service and any officer or employee of any Government agency who resigns from such agency in order to accept an appointment to the Service may transfer to the Service any annual or sick leave of absence standing to his credit at the time of his resignation from the Government agency in which he was employed, but in no event shall the amount of annual or sick leave of absence so transferred exceed the maximum amount of the annual or sick leave of absence which may be accumulated in either the Service or the Government agency to which such person is appointed, as the case may be.

#### [(APPLICATION OF ANNUAL AND SICK LEAVE ACT OF 1951

[SEC. 936. The Annual and Sick Leave Act of 1951, as amended (5 U.S.C. 2061 and the following), shall apply to career ministers and Foreign Service officers, who are not serving as chiefs of mission or who are not serving in a position in the Department which requires appointment by the President, by and with the advice and consent of the Senate, and to Foreign Service Reserve officers who are commissioned as diplomatic or consular officers, or both, in accordance with section 524 of the Foreign Service Act of 1946, as amended, notwithstanding the provisions of section 202(c) (1) (A) of the Annual and Sick Leave Act of 1951, as amended.

#### [(PART E—MEDICAL SERVICES

##### [(EXPENSES OF TREATMENT

[SEC. 941. (a) In the event an officer or employee of the Service who is a citizen of the United States incurs an illness or injury while such person is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, the Secretary may, in accordance with such

regulations as he may prescribe, pay for the cost of treatment of such illness or injury.

[(b) In the event a dependent of a United States citizen officer or employee of the Service who is stationed abroad, incurs an illness or injury while such dependent is located abroad, which requires hospitalization or similar treatment, and which is not the result of vicious habits, intemperance, or misconduct on his part, the Secretary may, in accordance with such regulations as he may prescribe, pay for that portion of the cost of treatment of each such illness or injury that exceeds \$35 up to a maximum limitation of one hundred and twenty days of treatment for each such illness or injury, except that such maximum limitation shall not apply whenever the Secretary, on the basis of professional medical advice, shall determine that such illness or injury clearly is caused by the fact that such dependent is or has been located abroad.

[(c) After sufficient experience in the operation of the medical protection plan authorized in subsections (a) and (b) of this section has been obtained, as determined by the Secretary, and if he considers that the benefits so authorized can be provided for as well and as cheaply in other ways, the Secretary may, under such regulations, and for such persons, locations, and conditions as he may deem appropriate, and within the limits prescribed in such subsections, contract for medical care pursuant to such arrangements, insurance, medical services, or health plans as he may deem appropriate.

#### [TRAVEL FOR MEDICAL PURPOSES

[SEC. 942. In the event an officer or employee of the Service who is a citizen of the United States or one of his dependents, requires medical care, for illness or injury not the result of vicious habits, intemperance or misconduct, while stationed abroad in a locality where there is no qualified person or facility to provide such care, the Secretary may, in accordance with such regulations as he may prescribe, pay the travel expenses of such person by whatever means he shall deem appropriate, including the furnishing of transportation, and without regard to the Standardized Government Travel Regulations and section 10 of the Act of March 3, 1933, as amended (60 Stat. 808; 5 U.S.C. 73b), to the nearest locality where suitable medical care can be obtained. If any such officer, employee, or dependent is too ill to travel unattended, or in the case of a dependent too young to travel alone, the Secretary may also pay the round-trip travel expenses of an attendant or attendants.

#### [PHYSICAL EXAMINATIONS AND COSTS OF INOCULATIONS

[SEC. 943. The Secretary shall, under such regulations as he may prescribe, provide for physical examinations for applicants for employment and for officers and employees of the Service who are citizens of the United States, and for their dependents, including examinations necessary to establish disability or incapacity in accordance with the provisions of section 831, and shall provide for administering inoculations or vaccinations to such officers and employees and their dependents.

**[SEC. 944.** Under such regulations as he may prescribe, the Secretary is authorized to provide medical services under part E of this title beyond the date of death or separation of an officer or employee.

**[FURNISHING MEDICAL SERVICES ABROAD**

**[SEC. 945.** The Secretary may establish medical treatment and health care facilities and provide for the services of physicians, nurses, or other medical or health care personnel at a post at which, in the opinion of the Secretary, sufficient personnel are employed to warrant such facilities or services.

**[TITLE X—MISCELLANEOUS**

**[PART A—PROHIBITIONS**

**[AGAINST UNIFORMS**

**[SEC. 1001.** An officer or employee of the Service holding a position of responsibility in the Service shall not wear any uniform except such as may be authorized by law or such as a military commander may require civilians to wear in a theater of military operations.

**[AGAINST ACCEPTING PRESENTS**

**[SEC. 1002.** A chief of mission or other principal officer may, under such regulations as the President may prescribe, accept gifts made to the United States, or to any political subdivision thereof by the government to which he is accredited or from which he holds an exequatur.

**[AGAINST ENGAGING IN BUSINESS ABROAD**

**[SEC. 1003.** An officer or employee of the Service shall not, while holding office, transact or be interested in any business or engage for profit in any profession in the country or countries to which he is assigned abroad in his own name or in the name or through the agency of any other person, except as authorized by the Secretary.

**[AGAINST CORRESPONDENCE ON AFFAIRS OF FOREIGN GOVERNMENTS**

**[SEC. 1004. (a)** An officer or employee of the Service shall not correspond in regard to the public affairs of any foreign government except with the proper officers of the United States, except as authorized by the Secretary.

**[(b)** An officer or employee of the Service shall not recommend any person for employment in any position of trust or profit under the government of the country to which he is detailed or assigned, except as authorized by the Secretary.

**[AGAINST POLITICAL, RACIAL, RELIGIOUS, OR COLOR DISCRIMINATION**

**[SEC. 1005.** In carrying out the provisions of this Act, no political test shall be required and none shall be taken into consideration, nor shall there be any discrimination against any person on account of race, creed, or color.

**[PART B—BONDS**

**[SEC. 1011.** Every secretary, consul general, consul, vice consul, Foreign Service officer, and Foreign Service Reserve officer, and, if required, any other officer or employee of the Service or of the Department before he enters upon the duties of his office shall give to the United States a bond in such form and in such penal sum as the Secretary shall prescribe, with such sureties as the Secretary shall approve, conditioned without division of penalty for the true and faithful performance of his duties, including (but not by way of limitation) certifying vouchers for payment, accounting for, paying over, and delivering up of all fees, moneys, goods, effects, books, records, papers, and other property that shall come to his hands or to the hands of any other person to his use as such officer or employee under any law now or hereafter enacted and for the true and faithful performance of all other duties now or hereafter lawfully imposed upon him as such officer or employee, and such bond shall be construed to be conditioned for the true and faithful performance of all official duties of whatever character now or hereafter lawfully imposed upon him, or by him assumed incident to his employment as an officer or employee of the Government. Notwithstanding any other provisions of law, upon approval of any bond given pursuant to this Act, the principal shall not be required to give another separate bond conditioned for the true and faithful performance of only a part of the duties for which the bond given pursuant to this Act is conditioned. The bond of an officer or employee of the Service shall be construed to be conditioned for the true and faithful performance of all acts of such officer incident to his office regardless of whether appointed or commissioned as diplomatic, consular, Foreign Service officer, or other officer of the Service. The bonds herein mentioned shall be deposited with the Secretary of the Treasury. Nothing herein contained shall be deemed to obviate the necessity of furnishing any bond which may be required pursuant to the provisions of the Subsistence Expense Act of 1926, as amended (44 Stat. 688; 47 Stat. 405; 56 Stat. 39; 5 U.S.C. 821-823, 827-833).

**[PART C—GIFTS**

**[SEC. 1021. (a)** The Secretary may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department including the Service or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, but no gift shall be accepted which is conditioned upon any expenditure not to be met therefrom or from the income thereof unless such expenditure has been approved by Act of Congress.

**[(b)** Any unconditional gift of money accepted pursuant to the authority granted in paragraph (a) of this section, the net proceeds from the liquidation (pursuant to paragraph (c) or paragraph (d) of this section) of any other property so accepted, and the proceeds of insurance on any such gift property not used for its restoration, shall



be deposited in the Treasury of the United States and are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department including the Service, and he may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such gifts and the income from such investments shall be available for expenditure in the operation of the Department including the Service and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Service by Congress.

[(c) The evidences of any unconditional gift of intangible personal property, other than money, accepted pursuant to the authority granted in paragraph (a) of this section, shall be deposited with the Secretary of the Treasury and he, in his discretion, may hold them, or liquidate them except that they shall be liquidated upon the request of the Secretary whenever necessary to meet payments required in the operation of the Department including the Service or the performance of its functions. The proceeds and income from any such property held by the Secretary of the Treasury shall be available for expenditures as is provided in paragraph (b) of this section.

[(d) The Secretary shall hold any real property or any tangible personal property accepted unconditionally pursuant to the authority granted in paragraph (a) of this section and he shall permit such property to be used for the operation of the Department including the Service and the performance of its functions or he may lease or hire such property, and may insure such property, and deposit the income thereof with the Secretary of the Treasury to be available for expenditure as provided in paragraph (b) of this section. The income from any such real property or tangible personal property shall be available for expenditure in the discretion of the Secretary for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured. Any such property when not required for the operation of the Department including the Service or the performance of its functions may be liquidated by the Secretary, and the proceeds thereof deposited with the Secretary of the Treasury, whenever in his judgment the purposes of the gifts will be served thereby.

[(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under authority of this Act shall be deemed to be a gift, devise, or bequest to or for the use of the United States.

#### **[PART D—AUTHORIZATION TO RETAIN ATTORNEYS**

[SEC. 1031. The Secretary may, without regard to sections 189 and 365 of the Revised Statutes (5 U.S.C. 49 and 314), authorize a principal officer to procure legal services whenever such services are required for the protection of the interests of the Government or to enable an officer or employee of the Service to carry on his work efficiently.

**[PART E—DELEGATION OF AUTHORITY]**

**[PART F—EXEMPTION FROM TAXATION]**

**[SEC. 1051.** Section 116 of the Internal Revenue Code, as amended (53 Stat. 48; 53 Stat. 575; 56 Stat. 842; 58 Stat. 46; 26 U.S.C. 116), relative to exclusions from gross income, is further amended by adding at the end thereof a new subsection to read as follows:

**["(k)** In the case of an officer or employee of the Foreign Service of the United States, amounts received by such officer or employee as allowances or otherwise under the terms of title IX of the Foreign Service Act of 1946."

**[PART G—INTERPRETATION OF THE ACT]**

**[LIBERAL-CONSTRUCTION CLAUSE]**

**[SEC. 1061.** The provisions of this Act shall be construed liberally in order to effectuate its purpose.

**[PROVISIONS THAT MAY BE HELD INVALID]**

**[SEC. 1062.** If any provision of this Act or the application of any such provision to any person or circumstance shall be held invalid, the validity of the remainder of the Act and the applicability of such provision to other persons or circumstances shall not be affected thereby.

**[HEADINGS OF TITLES, PARTS, AND SECTIONS]**

**[SEC. 1063.** The headings descriptive of the various titles, parts, and sections of this Act are inserted for convenience only, and, in case of any conflict between any such heading and the substance of the title, part, or section to which it relates, the heading shall be disregarded.

**[PROVISIONS OF THE ACT OF JULY 3, 1946]**

**[SEC. 1064.** Nothing in this Act shall be construed to affect the provisions of sections 1, 2, 3, and 4 of the Act of July 3, 1946 (Public Law 488, Seventy-ninth Congress). The "classified grades" within the meaning of that Act shall, from and after the effective date of this Act, be construed to mean classes 1 to 5, inclusive.

**[PART H—AUTHORIZATION FOR APPROPRIATIONS]**

**[SEC. 1071.** Appropriations to carry out the purposes of this Act are hereby authorized.

**[PART I—EDUCATIONAL FACILITIES]**

**[SEC. 1081.** Whenever the Secretary determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of American citizens stationed outside the United States engaged in carrying out Government activities, he is authorized, in such manner as he deems appro-

priate and under such regulations as he may prescribe, to establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, or to make grants of funds for such purposes, or otherwise provide for such educational facilities. The provisions of the Foreign Service Buildings Act, 1926, as amended, and of paragraphs (h) and (i) of section 3 of the Act entitled "An Act to provide certain basic authority for the Department of State", approved August 1, 1956 (5 U.S.C., 170h(h) and 170h(i)), may be utilized by the Secretary in providing assistance for educational facilities. Assistance may include, but shall not be limited to, hiring, transporting, and payment of teachers and other necessary personnel.

#### **[PART J—MALPRACTICE PROTECTION**

##### **[SEC. 1091. (a) The remedy—**

**[(1) against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, or**

**[(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,**

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State (including the Agency for International Development) in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.

**[(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or her on an attested true copy thereof to whomever was designated by the Secretary to receive such papers and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.**

**[(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney**

General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 of the United States Code and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.

[(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 of the United States Code and with the same effect.

[(e) For purposes of this section, the provisions of section 2680(h) of title 28 of the United States Code shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.

[(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28 of the United States Code, for such damage or injury.

[(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States Ambassador or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.

## **[TITLE XI—TEMPORARY PROVISIONS**

### **[PART A—TEMPORARY PROVISIONS CONCERNING APPOINTMENTS AND SALARIES OF OFFICERS AND EMPLOYEES OF THE SERVICE**

#### **[REINSTATEMENT OF CHIEFS OF MISSION WHO ARE FORMER FOREIGN SERVICE OFFICERS**

[SEC. 1101. Any person who on the effective date of this Act is a chief of mission and who has previously been a Foreign Service offi-

cer may be reinstated as a Foreign Service officer in the class of career minister.

**[TRANSFER OF FOREIGN SERVICE OFFICERS FROM OLD CLASSES TO NEW CLASSES**

**[SEC. 1102.** (a) Foreign Service officers on active service on the effective date of this Act shall, by virtue of this Act, be transferred from the classes in which they are serving on such date to the new classes established by this Act as follows: Officers of class I to the new class 1; officers of class II to the new class 2; officers of classes III and IV to the new class 3; officers of classes V and VI to the new class 4; officers of classes VII and VIII to the new class 5; officers in the unclassified grade to the new class 6.

**[**(b) Each officer so transferred shall under such regulations as the Secretary may prescribe receive that salary in the new class which shall as nearly as possible correspond to his relative standing in the Service.

**[**(c) Whenever, in accordance with the provisions of paragraph (a) of this section, the officers in a new class shall be officers who previously served in two former classes that were combined to form the new class, the period of minimum service in class, for the purposes of determining eligibility for promotion in accordance with the provisions of section 622, shall commence to run from the date of their promotion to the lower of the two classes from which the new class is composed and from the date of their promotion to the higher of the two classes from which the new class is composed for the purposes of computing the minimum period an officer shall serve in a class before the commencement of the period during which he must obtain a promotion in order to prevent being retired. In all other cases, service in a former class shall be considered as a constituting service in the new class for the purposes of section 622.

**[TRANSFER OF OTHER OFFICERS AND EMPLOYEES OF THE SERVICE FROM THEIR PRESENT POSITIONS TO NEW POSITIONS**

**[SEC. 1103.** The Secretary shall, under such regulations as he may prescribe, provide for the transfer of the personnel of the Service, other than persons occupying positions which under the terms of this Act constitute them chiefs of mission and Foreign Service officers, to corresponding positions established by the terms of this Act or by any regulations issued pursuant thereto.

**[IN-CLASS PROMOTION**

**[SEC. 1104.** In making transfers of personnel in accordance with the provisions of sections 1102 and 1103, credit for time served in a previous class or position shall be given for the purpose of determining eligibility for in-class promotions in a new class in the same manner as if such time had been served in the new class.

**[RULES GOVERNING THE MAKING OF SALARY DETERMINATIONS IN CARRYING OUT AN INITIAL CLASSIFICATION OF THE SERVICE]**

**[SEC. 1105.** In making the initial classification of the Service for Foreign Service staff officers and employees in accordance with the provisions of sections 441 and 442, the following rules shall apply:

**[(1)** The principle of equal compensation for equal work, irrespective of sex, shall be followed.

**[(2)** If an officer or employee is receiving basic salary at less than the minimum rate of the class or subclass to which the position he holds is allocated, his salary shall be increased to the lowest basic salary of that class or subclass.

**[(3)** If an officer or employee is receiving basic salary within the range provided for the class or subclass to which the position he holds is allocated, and at one of the rates within that range, no change shall be made in his basic salary; if his basic salary rate is within the range but does not correspond to any one of the rates prescribed for that range by section 415, his salary shall be adjusted by fixing it at the next higher rate above the rate which he is receiving.

**[(4)** If an officer or employee is receiving basic salary at a rate in excess of the maximum basic salary rate provided by section 415 for the class or subclass to which the position he holds is allocated in accordance with the provisions of section 1103, he shall not suffer a diminution in salary as a consequence of the classification of the position which he holds so long as he continues to occupy that position, but if he is not receiving salary at one of the rate prescribed in section 415, his salary shall be adjusted by fixing it at the next higher rate above the rate he is receiving.

**[PART B—TEMPORARY PROVISIONS CONCERNING RETIREMENT]**

**[MANDATORY RETIREMENT]**

**[SEC. 1111. (a)** Notwithstanding the provisions of section 632, regarding the retirement of Foreign Service officers at the age of sixty years, Foreign Service officers below the class of career minister shall, during the first year after the effective date of this Act, be mandatorily retired for age upon reaching the age of sixty-four unless their services have been extended in accordance with the provisions of section 632; during the second year, at age sixty-three; during the third year at age sixty-two; during the fourth year at age sixty-one; and, thereafter, at age sixty, but in no event shall any Foreign Service officer be mandatorily retired for age during such four-year period until he has had fifteen years of service.

**[(b)** No Foreign Service officer shall be mandatorily retired in accordance with provisions of section 633 or 634 until three years after the effective date of this Act.

**[RATE OF ANNUITIES TO BE RECOMPUTED]**

**[SEC. 1112.** The Secretary shall cause annuities of all persons who are receiving annuities from the Foreign Service Retirement and Disability Fund on the effective date of this Act to be recomputed in

accordance with the provisions of section 821(a) and annuities payable to such persons shall, commencing on the effective date of this Act, be paid at the rates so determined, but no such recomputation or any other action taken pursuant to this Act shall operate to reduce the rate of the annuity received by any such person unless such person voluntarily elects to receive a reduced annuity as provided in section 821(c).

**[PART C—MISCELLANEOUS TEMPORARY PROVISIONS]**

**[BONDS]**

**[SEC. 1121.** The provisions of this Act shall not operate to impair the validity of any existing bond furnished by any officer or employee of the Service.

**[USE OF APPROPRIATIONS]**

**[SEC. 1122.** Funds appropriated to the Department of State for the fiscal year 1947, under the caption "Foreign Service", are hereby made available for the purposes of this Act in accordance with authority granted herein and such regulations as the Secretary may prescribe. The appropriation of such additional funds as may be required to carry out the provisions of this Act is hereby authorized.

**[PART D—REPEAL CLAUSES]**

**[REPEAL OF PARTICULAR STATUTES]**

**[SEC. 1131.** The following statutes or parts of statutes are hereby repealed:

**[(1)** Section 208 of the Revised Statutes, as amended by the Act of May 29, 1928 (ch. 901, Public Law Numbered 611, 45 Stat. 987) (5 U.S.C. 163).

**[(2)** Section 1674 of the Revised Statutes, as amended by section 6 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 806), and as further amended by the Act of March 3, 1875 (ch. 153, 18 Stat. 483), and by that part of the Act of July 1, 1916 (ch. 208, Public Law Numbered 131, 39 Stat. 252), which constitutes the second proviso under the heading "Salaries of Secretaries in the Diplomatic Service" (22 U.S.C. 40 and 51).

**[(3)** Section 1675 of the Revised Statutes as amended by the Act of March 3, 1875 (ch. 153, 18 Stat. 483), and by that part of title I of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1015), under the heading "Diplomatic and Consular Service" and the subheading "Ambassadors and Ministers" (22 U.S.C. 32).

**[(4)** Section 1685 of the Revised Statutes as amended by schedule A of the Act of March 2, 1909 (ch. 235, Public Law Numbered 292, 35 Stat. 673), and as further amended by section 3 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 805), section 17 of the Act of May 24, 1924 (ch. 182, Public Law Numbered 135, 43 Stat. 143), hereinafter referred to as the Act of May 24, 1924, and by that part of title I of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1016), which reads as follows: "*Pro-*

*vided*, That after June 30, 1924, vice consuls while in charge of a consulate general or consulate during the absence of the principal officer shall be entitled to additional compensation in the same manner and under the same conditions as Foreign Service officers as provided in section 17 of the Act of May 24, 1924," renumbered as section 25 and further amended by section 7 of the Act of February 23, 1931 (ch. 276, Public Law Numbered 715, 46 Stat. 1210), hereinafter referred to as the Act of February 23, 1931 (22 U.S.C. 20).

[(5) Section 1686 of the Revised Statutes (22 U.S.C. 36).

[(6) Section 1688 of the Revised Statutes (22 U.S.C. 39).

[(7) Section 1695 of the Revised Statutes and section 3 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100), which reenacted certain parts of section 1695 of the Revised Statutes without specifically amending such section (22 U.S.C. 51a and 55).

[(8) Section 1696 of the Revised Statutes (22 U.S.C. 58).

[(9) Section 1712 of the Revised Statutes, as amended by the Act of June 18, 1888 (ch. 393, 25 Stat. 186) (22 U.S.C. 80).

[(10) Section 1713 of the Revised Statutes, as amended by the Act of June 18, 1888 (ch. 393, 25 Stat. 186) (22 U.S.C. 82).

[(11) Section 1714 of the Revised Statutes (22 U.S.C. 71).

[(12) Section 1738 of the Revised Statutes (22 U.S.C. 105).

[(13) Section 1740 of the Revised Statutes (22 U.S.C. 121).

[(14) Section 1743 of the Revised Statutes (22 U.S.C. 125).

[(15) Section 1744 of the Revised Statutes (22 U.S.C. 33).

[(16) Section 1748 of the Revised Statutes (22 U.S.C. 129).

[(17) Section 1749 of the Revised Statutes (22 U.S.C. 130).

[(18) Section 1752 of the Revised Statutes (22 U.S.C. 132).

[(19) That part of section 1 of the Act of June 11, 1874 (ch. 275, 18 Stat. 67), which reads as follows: "And the Secretary of State is authorized to allow and pay to the secretary of legation and to the second secretary of legation and to the messenger of the legation in Paris, from the moneys collected at the legation for the transmission of consular invoices, an amount not to exceed in the aggregate six hundred dollars in any one year, to be divided and distributed as the Secretary of State may direct, provided that the surplus receipts are sufficient for that purpose" (22 U.S.C. 37).

[(20) Section 4 of the Act of June 11, 1874 (ch. 275, 18 Stat. 70) (22 U.S.C. 122).

[(21) The Act of June 17, 1974 (ch. 294, 18 Stat. 77) (22 U.S.C. 124 and 126).

[(22) That part of the Act of January 27, 1879 (ch. 28, 20 Stat. 273), which reads as follows: "And it shall be the duty of consuls to make to the Secretary of State a quarterly statement of exports from, and imports to, the different places to which they are accredited, giving, as near as may be, the market price of the various articles of exports and imports, the duty and port charges, if any, on articles imported and exported, together with such general information as they may be able to obtain as to how, where, and through what channels a market may be opened for American products and manufactures. In addition to the duties now imposed by law, it shall be the duty of consuls and commercial agents of the United States, annually, to procure and transmit to the Department of State, as far as practicable, information



respecting the rate of wages paid for skilled and unskilled labor within their respective jurisdiction" (22 U.S.C. 81).

[(23) That part of section 5 of the Act of February 14, 1903 (ch. 552, Public Law Numbered 87, 32 Stat. 827), reading as follows: "And all consular officers of the United States, including consuls-general, consuls, and commercial agents, are hereby required, and it is made a part of their duty, under the direction of the Secretary of State, to gather and compile, from time to time, useful and material information and statistics in respect to the subjects enumerated in section 3 of this Act in the countries and places to which such consular officers are accredited, and to send under the direction of the Secretary of State, reports as required by the Secretary of Commerce and Labor of the information and statistics thus gathered and compiled, such reports to be transmitted through the Department of State to the Secretary of the Department of Commerce and Labor," as amended by section 3 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100); by the Act of August 23, 1912 (ch. 350, Public Law Numbered 299, 37 Stat. 407), and by the Act of March 4, 1913 (ch. 141, Public Law Numbered 426, 37 Stat. 736) (15 U.S.C. 175).

[(24) Section 11 of the Act of February 14, 1903 (ch. 552, Public Law Numbered 87, 32 Stat. 830) (5 U.S.C. 162).

[(25) Section 4 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 100), as amended by section 10 of the Act of May 24, 1924 (43 Stat. 142), and renumbered as section 17 and further amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209) (22 U.S.C. 9).

[(26) That part of section 8 of the Act of April 5, 1906 (ch. 1366, Public Law Numbered 83, 34 Stat. 101), reading as follows: "but this shall not apply to consular agents, who shall be paid by one-half of the fees received in their offices, up to maximum sum of one thousand dollars in any one year, the other half being accounted for and paid into the Treasury of the United States" (22 U.S.C. 99).

[(27) That part of schedule A of the Act of March 2, 1909 (ch. 235, Public Law Numbered 292; 35 Stat. 672), which reads as follows: "And hereafter no new ambassadorship shall be created unless the same shall be provided for by Act of Congress." (22 U.S.C. 31).

[(28) Section 7 of the Act of February 5, 1915 (ch. 23, Public Law Numbered 242, 38 Stat. 807), as amended by section 12 of the Act of May 3, 1945 (ch. 105, Public Law Numbered 48; 59 Stat. 105), hereinafter referred to as the Act of May 3, 1945 (22 U.S.C. 38).

[(29) That part of the Act of July 1, 1916, which, under the heading "Salaries of Secretaries in the Diplomatic Service," authorizes the President to designate and assign any secretary of class one as counselor of embassy or legation (39 Stat. 252), as amended by section 16 of the Act of May 24, 1924 (43 Stat. 143), and renumbered as section 23 by section 7 of the Act of February 23, 1931 (46 Stat. 1210) (22 U.S.C. 18).

[(30) The Joint Resolution of September 29, 1919 (ch. 72, Public Resolution Numbered 16, 41 Stat. 291) (22 U.S.C. 34).

[(31) That part of the Act of June 1, 1922 (ch. 204, Public Law Numbered 229, 42 Stat. 600), which under the heading "Diplomatic and Consular Service" and subheading "Ambassadors and Ministers"

in title I authorizes the appointment of an envoy extraordinary and minister plenipotentiary to Egypt (22 U.S.C. 34c).

[(32) Section 1 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 8 by section 7 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 1).

[(33) Section 2 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 9 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 2).

[(34) Section 3 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 10 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1207), and as further amended by section 2 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 583), and by sections 4 and 5 of the Act of May 3, 1945 (59 Stat. 102, 103) (22 U.S.C. 3).

[(35) Section 4 of the Act of May 24, 1924 (43 Stat. 140), renumbered as section 11 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1215), and as further amended by the Act of June 29, 1935 (ch. 337, Public Law Numbered 181, 49 Stat. 436) (22 U.S.C. 4).

[(36) Section 5 of the Act of May 24, 1924 (43 Stat. 141), renumbered as section 12 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1208) (22 U.S.C. 5 and 6).

[(37) Section 6 of the Act of May 24, 1924, renumbered as sections 13 and 14, and amended by section 7 of the Act of February 23, 1931, and as further amended by section 6 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 7).

[(38) Section 9 of the Act of May 24, 1924 (43 Stat. 142), renumbered as section 16 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1208), and further amended by section 7 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 11).

[(39) Section 12 of the Act of May 24, 1924 (43 Stat. 142), renumbered as section 19 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209), and further amended by section 8 of the Act of May 3, 1945 (59 Stat. 104) (22 U.S.C. 12).

[(40) Section 13 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 20 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209) (22 U.S.C. 14).

[(41) Section 14 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 21 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1209), and further amended by section 9 of the Act of May 3, 1945 (59 Stat. 103) (22 U.S.C. 11).

[(42) Section 15 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 22 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1210), and further amended by the Act of March 17, 1941 (ch. 20, Public Law Numbered 17, 55 Stat. 44) (22 U.S.C. 17 and 17a).

[(43) Paragraph 1 of section 17 of the Act of May 24, 1924 (43 Stat. 143), renumbered as section 24 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1210) (22 U.S.C. 19).

[(44) Section 18 of the Act of May 24, 1924 (43 Stat. 144), as amended by section 1 of the Act of July 3, 1926 (ch. 798, Public Law Numbered 519, 44 Stat. 902), renumbered as section 26 and amended

by section 7 of the Act of February 23, 1931 (46 Stat. 1211), further amended by section 3 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 584), by the Act of July 19, 1939 (ch. 330, Public Law Numbered 197, 53 Stat. 1067), by the Act of August 5, 1939 (ch. 441, Public Law Numbered 277, 53 Stat. 1208), by section 1 of the Act of April 20, 1940 (ch. 118, Public Law Numbered 464, 54 Stat. 143), by section 4 of the Act of October 14, 1940 (ch. 859, Public Law Numbered 846, 54 Stat. 1118) and by section 1 of the Act of May 13, 1941 (ch. 115, Public Law Numbered 69, 55 Stat. 189) (22 U.S.C. 21).

[(45) Section 19 of the Act of May 24, 1924 (43 Stat. 146), renumbered as section 27 by section 7 of the Act of February 23, 1931 (46 Stat. 1213) (22 U.S.C. 22).

[(46) Section 20 of the Act of May 24, 1924 (43 Stat. 146), renumbered as section 28 and amended by section 7 of the Act of February 23, 1931 (46 Stat. 1213) (22 U.S.C. 23).

[(47) Section 31 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1214), and as amended by section 10 of the Act of May 3, 1945 (59 Stat. 105) (22 U.S.C. 23f and 23g).

[(48) Section 32 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1214), and as amended by section 5 of the Act of July 3, 1946 (Public Law 488, Seventy-ninth Congress) (22 U.S.C. 23h).

[(49) Section 33 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1215), and as amended by section 4 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 588) (22 U.S.C. 3a and 23i).

[(50) Section 34 of the Act of May 24, 1924, as added to that Act by section 7 of the Act of February 23, 1931 (46 Stat. 1216) (22 U.S.C. 23j).

[(51) That part of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1017), which under the heading "Diplomatic and Consular Service" and the subheading "Allowance for Clerk Hire at United States Consulates" reads as follows: "Clerks, whenever hereafter appointed, shall so far as possible, be appointed under civil service rules and regulations", and similar provisions in later Acts (22 U.S.C. 56).

[(52) That part of the Act of February 27, 1925 (ch. 364, Public Law Numbered 502, 43 Stat. 1016), which under the heading "Diplomatic Service" and the subheading "Clerks at Embassies and Legations", reads as follows: "who (clerks at the embassies and legations) whenever hereafter appointed shall be citizens of the United States \* \* \* and so far as practicable shall be appointed under civil service rules and regulations", and similar provisions in later Acts (22 U.S.C. 35).

[(53) Section 2 of the Act of July 3, 1926 (ch. 798, Public Law Numbered 519, 44 Stat. 903) (22 U.S.C. 21a).

[(54) Sections 1, 2, 3, 4, 5, and 7 of this Act of March 3, 1927 (ch. 365, Public Law Numbered 768, 44 Stat. 1394) as amended by the Act of April 12, 1930 (ch. 142, Public Law Numbered 122, 46 Stat. 163) (15 U.S.C. 197-197d and 197f).

[(55) The Joint Resolution of January 22, 1930 (ch. 22, Public Resolution Numbered 32, 46 Stat. 57) (22 U.S.C. 34a).

[(56) The Act of June 5, 1930 (ch. 399, Public Law Numbered 304, 46 Stat. 497-499) (7 U.S.C. 541-545).

[(57) The Joint Resolution of June 5, 1930 (ch. 404, Public Resolution Numbered 81, 46 Stat. 502) (22 U.S.C. 34b).

[(58) The Act of January 21, 1931 (ch. 42, Public Law Numbered 569, 46 Stat. 1040) (22 U.S.C. 32a).

[(59) Section 1 of the Act of February 23, 1931 (46 Stat. 1207), as amended by section 2 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 23a).

[(60) Section 2 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23b).

[(61) Section 3 of the Act of February 23, 1931 (46 Stat. 1207), as amended by section 1 of the Act of April 24, 1939 (ch. 84, Public Law Numbered 40, 53 Stat. 583), and as further amended by section 3 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 23c).

[(62) Section 4 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23d).

[(63) Section 5 of the Act of February 23, 1931 (46 Stat. 1207) (22 U.S.C. 23e).

[(64) That part of section 209 of the Act of June 30, 1932 (ch. 314, Public Law Numbered 212, 47 Stat. 405), as amended, which was added to that Act by the Act of April 30, 1940 (ch. 172, Public Law Numbered 499, 54 Stat. 174) (5 U.S.C. 823a).

[(65) That part of Reorganization Plan Numbered II, made effective July 1, 1939, by the Act of June 7, 1939 (ch. 193, Public Resolution Numbered 20, 53 Stat. 813), designated as subparagraphs (a), (b), and (c) under section 1 of part 1 (53 Stat. 1431) (note under 5 U.S.C. 133t).

[(66) Section 1 of the Act of May 3, 1945 (59 Stat. 102) (22 U.S.C. 1a).

[(67) Section 12 of the Act of May 3, 1945 (59 Stat. 105) (22 U.S.C. 24).

#### [GENERAL REPEAL OR AMENDMENT PROVISION

[Sec. 1132. Any statute that is not repealed by section 1131 but which is inconsistent with any of the provisions of this Act shall be considered as having been amended or superseded by such provisions.

#### [RIGHTS AND LIABILITIES UNDER STATUTES THAT ARE REPEALED

[Sec. 1133. The repeal of the several statutes or parts of statutes accomplished by section 1131 shall not affect any act done or right accruing or accrued, or any suit or proceeding had or commenced in any civil cause, before such repeal, but all rights and liabilities under the statutes or parts thereof so repealed shall continue, and may be enforced in the same manner as if such repeal had not been made; subject, however, to the provisions of section 1134.

#### [STATUTES PREVIOUSLY REPEALED BY IMPLICATION

[Sec. 1134. The repeal of the several statutes or parts of statutes accomplished by section 1131 shall not be construed as a revival, up

to the effective date of this Act, of any statute or part of a statute that may have previously been repealed by implication.

**【CONTINUATION IN FORCE OF EXISTING RULES, REGULATIONS, AND EXECUTIVE ORDERS**

**【SEC. 1135.** Notwithstanding the provisions of this Act, existing rules, regulations of or applicable to the Service, and Executive orders shall remain in effect until revoked or rescinded or until modified or superseded by regulations made in accordance with the provisions of this Act, unless clearly inconsistent with the provisions of this Act.

**【PART E—EFFECTIVE DATE OF ACT**

**【SEC. 1141.** The effective date of this Act shall be three months following the date of its enactment.】

**THE ACT OF AUGUST 1, 1956**

**AN ACT To provide certain basic authority for the Department of State**

\* \* \* \* \*

**SEC. 13. (a)** There is hereby established a working capital fund for the Department of State, which shall be available without fiscal year limitations, for expenses (including those authorized by the **【Foreign Service Act of 1946, as amended】** *Foreign Service Act of 1980*) and equipment, necessary for maintenance and operation in the city of Washington and elsewhere of (1) central reproduction, editorial, data processing, audiovisual, library and administrative support services; (2) central services for supplies and equipment (including repairs); (3) such other administrative services as the Secretary, with the approval of the Bureau of the Budget, determines may be performed more advantageously and more economically as central services; and (4) medical and health care services. The capital of the fund shall consist of the amount of the fair and reasonable value of such supply inventories, equipment, and other assets and inventories on order, pertaining to the services to be carried on by the fund, as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations, together with any appropriations made for the purpose of providing capital. The fund shall be reimbursed, or credited with advance payments, from applicable appropriations and funds of the Department of State, other Federal agencies, and other sources authorized by law, for supplies and services at rates which will approximate the expense of operations, including accrual of annual leave and depreciation of plant and equipment of the fund. The fund shall also be credited with other receipts from sale or exchange of property or in payment for loss or damage to property held by the fund. There shall be transferred into the Treasury as miscellaneous receipts, as of the close of each fiscal year, earnings which the Secretary determines to be excess to the needs of the fund.

\* \* \* \* \*

【SEC. 14. (a) Subject to the provisions of this section and under such regulations as the Secretary of State may prescribe, the Secretary is authorized to provide for payment of a gratuity to the surviving dependents of any Foreign Service employee who dies as a result of injuries sustained in the performance of duty outside the United States in an amount equal to one year's salary at the time of death. Appropriations for this purpose are authorized to be made to the account for salaries and expenses of the employing agency. Any death gratuity payment made under this section shall be held to have been a gift and shall be in addition to any other benefit payable from any source.

【(b) A death gratuity payment shall be made under this section only if the survivor entitled to payment under subsection (c) is entitled to elect monthly compensation under section 8133 of title 5, United States Code, because the death resulted from an injury (excluding a disease proximately caused by the employment) sustained in the performance of duty, without regard to whether such survivor elects to waive compensation under such section 8133.

【(c) A death gratuity payment under this section shall be made as follows:

【(1) First, to the widow or widower.

【(2) Second, to the child, or children in equal shares, if there is no widow or widower.

【(3) Third, to the dependent parent, or dependent parents in equal shares, if there is no widow, widower, or child.

If there is no survivor entitled to payment under this subsection, no payment shall be made.

【(d) As used in this section—

【(1) the term "Foreign Service employee" means any employee of the United States who is a chief of mission, a Foreign Service officer, a Foreign Service information officer, a Foreign Service Reserve officer of limited or unlimited tenure, a Foreign Service staff officer or employee, a consular agent, a United States representative to an international organization or commission, or an alien employee appointed under section 541 of the Foreign Service Act of 1946;

【(2) each of the terms "widow", "widower", "child", and "parents" shall have the same meaning given each such term by section 8101 of title 5, United States Code; and

【(3) the term "United States" means the several States and the District of Columbia.

【(e) The provisions of this section apply with respect to death occurring on and after January 1, 1973.】

\* \* \* \* \*

【SEC. 16. Under the direction of the President—

【(1) the United States chief of mission (as defined in section 121(9) of the Foreign Service Act of 1946) in a foreign country shall have full responsibility for the direction, coordination, and supervision of all United States Government officers and employees in that country, except for personnel under the command of a United States area military commander;

【(2) the chief of mission shall keep himself fully and currently informed with respect to all activities and operations of the

United States Government within that country, and shall insure that all Government officers and employees in that country, except for personnel under the command of a United States area military commander, comply fully with his directives; and

[(3) any department or agency having officers or employees in a country shall keep the United States chief of mission in that country fully and currently informed with respect to all activities and operations of its officers and employees in that country, and shall insure that all of its officers and employees, except for personnel under the command of a United States area military commander, comply fully with all applicable directives of the chief of mission.]

\* \* \* \* \*

*SEC. 25. (a) The Secretary of State may accept on behalf of the United States gifts made unconditionally by will or otherwise for the benefit of the Department of State (including the Foreign Service) or for the carrying out of any of its functions. Conditional gifts may be so accepted at the discretion of the Secretary, and the principal of and income from any such conditional gift shall be held, invested, reinvested, and used in accordance with its conditions, except that no gift shall be accepted which is conditioned upon any expenditure which will not be met by the gift or the income from the gift unless such expenditure has been approved by Act of Congress.*

*(b) Any unconditional gift of money accepted under subsection (a), the income from any gift property held under subsection (c) or (d) (except income made available for expenditure under subsection (d) (2)), the net proceeds from the liquidation of gift property under subsection (c) or (d), and the proceeds of insurance on any gift property which are not used for its restoration, shall be deposited in the Treasury of the United States. Such funds are hereby appropriated and shall be held in trust by the Secretary of the Treasury for the benefit of the Department of State (including the Foreign Service). The Secretary of the Treasury may invest and reinvest such funds in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. Such funds and the income from such investments shall be available for expenditure in the operation of the Department of State (including the Foreign Service) and the performance of its functions, subject to the same examination and audit as is provided for appropriations made for the Foreign Service by the Congress.*

*(c) The evidences of any unconditional gift of intangible personal property (other than money) accepted under subsection (a), shall be deposited with the Secretary of the Treasury who may hold or liquidate them, except that they shall be liquidated upon the request of the Secretary of State whenever necessary to meet payments required in the operation of the Department of State (including the Foreign Service) or the performance of its functions.*

*(d) (1) The Secretary of State shall hold any real property or any tangible personal property accepted unconditionally pursuant to subsection (a) and shall either use such property for the operation of the Department of State (including the Foreign Service) and the performance of its functions or lease or hire such property, except that*

*any such property not required for the operation of the Department of State (including the Foreign Service) or the performance of its functions may be liquidated by the Secretary of State whenever in the judgment of the Secretary of State the purposes of the gift will be served thereby. The Secretary of State may insure any property held under this subsection. Except as provided in paragraph (2), the Secretary shall deposit the income from any property held under this subsection with the Secretary of the Treasury as provided in subsection (b).*

*(2) The income from any real property or tangible personal property held under this subsection shall be available for expenditure at the discretion of the Secretary of State for the maintenance, preservation, or repair and insurance of such property and any proceeds from insurance may be used to restore the property insured.*

*(e) For the purpose of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted under this section shall be deemed to be a gift, devise, or bequest to and for the use of the United States.*

*(f) The authorities available to the Secretary of State under this section with respect to the Department of State shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.*

*Sec. 26. (a) The Secretary of State may, without regard to section 3106 of title 5, United States Code, authorize a principal officer of the Foreign Service to procure legal services whenever such services are required for the protection of the interests of the Government or to enable a member of the Service to carry on the member's work efficiently.*

*(b) The authority available to the Secretary of State under this section shall be available to the Director of the International Communication Agency and the Director of the United States International Development Cooperation Agency with respect to their respective agencies.*

*Sec. 27. (a) In order to expand employment opportunities for family members of United States Government personnel assigned abroad, the Secretary of State shall seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies.*

*(b) Any member of a family of a member of the Foreign Service may accept gainful employment in a foreign country unless such employment—*

*(1) would violate any law of such country or of the United States; or*

*(2) could, as certified in writing by the United States chief of missions to such country, damage the interests of the United States.*

*Sec. 28. The Secretary of State may authorize the principal officer of a Foreign Service post to provide for the use of Government owned or leased vehicles located at that post for transportation of United States Government employees and their families when public transportation is unsafe or not available or when such use is advantageous to the Government.*



*Sec. 29. Whenever the Secretary of State determines that educational facilities are not available, or that existing educational facilities are inadequate, to meet the needs of children of United States citizens stationed outside the United States who are engaged in carrying out Government activities, the Secretary may, in such manner as he deems appropriate and under such regulations as he may prescribe, establish, operate, and maintain primary schools, and school dormitories and related educational facilities for primary and secondary schools, outside the United States, make grants of funds for such purposes, or otherwise provide for such educational facilities. The authorities of the Foreign Service Buildings Act, 1926, and of paragraphs (h) and (i) of section 3 of this Act, may be utilized by the Secretary in providing assistance for educational facilities. Such assistance may include hiring, transporting, and payment of teachers and other necessary personnel.*

*Sec. 30. (a) The remedy—*

*(1) against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, or*

*(2) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under such sections,*

*for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, nurse, pharmacist, or paramedical (including medical and dental assistants and technicians, nursing assistants, and therapists) or other supporting personnel of the Department of State in furnishing medical care or related services, including the conducting of clinical studies or investigations, while in the exercise of his or her duties in or for the Department of State or any other Federal department, agency, or instrumentality shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such physician, dentist, nurse, pharmacist, or paramedical or other supporting personnel (or his or her estate) whose act or omission gave rise to such claim.*

*(b) The United States Government shall defend any civil action or proceeding brought in any court against any person referred to in subsection (a) of this section (or his or her estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as may be determined by the Attorney General, all process served upon him or her or an attested true copy thereof to whomever was designated by the Secretary to receive such papers. Such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the Secretary.*

*(c) Upon a certification by the Attorney General that the defendant was acting within the scope of his or her employment in or for the Department of State or any other Federal department, agency, or instrumentality at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and*

*division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28, United States Code, and all references thereto. Should a United States district court determine on a hearing on a motion to remand held before a trial on the merits that the case so removed is one in which a remedy by suit within the meaning of subsection (a) of this section is not available against the United States, the case shall be remanded to the State court except that where such remedy is precluded because of the availability of a remedy through proceedings for compensation or other benefits from the United States as provided by any other law, the case shall be dismissed, but in that event, the running of any limitation of time for commencing, or filing an application or claim in, such proceedings for compensation or other benefits shall be deemed to have been suspended during the pendency of the civil action or proceeding under this section.*

*(d) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28, the United States Code, and with the same effect.*

*(e) For purposes of this section, the provisions of section 2680(h) of title 28, United States Code, shall not apply to any tort enumerated therein arising out of negligence in the furnishing of medical care or related services, including the conducting of clinical studies or investigations.*

*(f) The Secretary may, to the extent he deems appropriate, hold harmless or provide liability insurance for any person to whom the immunity provisions of subsection (a) of this section apply, for damages for personal injury, including death, negligently caused by any such person while acting within the scope of his or her office or employment and as a result of the furnishing of medical care or related services, including the conducting of clinical studies or investigations, if such person is assigned to a foreign area or detailed for service with other than a Federal agency or institution, or if the circumstances are such as are likely to preclude the remedies of third persons against the United States provided by sections 1346(b) and 2672 of title 28, United States Code, for such damage or injury.*

*(g) For purposes of this section, any medical care or related service covered by this section and performed abroad by a covered person at the direction or with the approval of the United States chief of mission or other principal representative of the United States in the area shall be deemed to be within the scope of employment of the individual performing the service.*

*Sec. 31. (a) The Secretary of State may authorize and assist in the establishment, maintenance, and operation by civilian officers and employees of the Government of non-Government-operated services and facilities at posts abroad, including the furnishing of space, utilities, and properties owned or leased by the Government for use by its diplomatic, consular, and other missions and posts abroad. The provisions of the Foreign Service Buildings Act, 1926 (22 U.S.C. 292-300) and section 13 of this Act may be utilized by the Secretary in providing such assistance.*

*(b) The Secretary may establish and maintain emergency commissary or mess services in places abroad where, in the judgment of the*

*Secretary, such services are necessary temporarily to insure the effective and efficient performance of official duties and responsibilities. Reimbursements incident to the maintenance and operation of commissary or mess service under this subsection shall be at not less than cost as determined by the Secretary and shall be used as working funds, except that an amount equal to the amount expended for such services shall be covered into the Treasury as miscellaneous receipts.*

*(c) Services and facilities established under this section shall be made available, insofar as practicable, to officers and employees of all agencies and their dependents who are stationed in the locality abroad. Such services and facilities shall not be established in localities where another agency operates similar services or facilities unless the Secretary determines that additional services or facilities are necessary. Other agencies shall to the extent practicable avoid duplicating the facilities and services provided or assisted by the Secretary under this section.*

*(d) Charges at any post abroad for a service or facility provided, authorized or assisted under this section shall be at the same rate for all civilian personnel of the Government serviced thereby, and all charges for supplies furnished to such a service or facility abroad by any agency shall be at the same rate as that charged by the furnishing agency to its comparable civilian services and facilities.*

*SEC. 32. The Secretary of State may pay, without regard to section 5702 of title 5, United States Code, subsistence expenses of (1) security officers of the Department of State who are on authorized protective missions, and (2) members of the Foreign Service and employees of the Department who are required to spend extraordinary amounts of time in travel status.*

*SEC. 33. This Act may be cited as the "State Department Basic Authorities Act of 1956".*

## PEACE CORPS ACT

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### TITLE I—THE PEACE CORPS

\* \* \* \* \*

#### PEACE CORPS VOLUNTEERS

SEC. 5. (a) \* \* \*

\* \* \* \* \*

(f) (1) Any period of satisfactory service of a volunteer under this Act shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(A) for the purposes of [section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)),] section 816(a) of the Foreign Service Act of 1980 and every other Act establishing a retirement system for civilian employees of any United States Government agency; and

(B) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Civil Service Commission, the Foreign Service Act of [1946,] 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

\* \* \* \* \*

-- (h) Volunteers shall be deemed employees of the United States Government for the purposes of the Federal Tort Claims Act and any other Federal tort liability statute, the Federal Voting Assistance Act of 1955 (5 U.S.C. 2171 et seq.), the Act of June 4, 1954, chapter 264, section 4 (5 U.S.C. 73b-75), the Act of December 23, 1944, chapter 716, section 1, as amended (31 U.S.C. 492a), section 5584 of title 5, United States Code (and readjustment allowances paid under this Act shall be considered as pay for purposes of such section), and section 1 of the Act of June 4, 1920 (41 Stat. 750), as amended (22 U.S.C. 214). The provisions of [section 1091 of the Foreign Service Act of 1946,] *section 30 of the State Department Basic Authorities Act of 1956*, relating to malpractice protection shall apply to volunteers, and the [Director of ACTION] *President* shall have the authority granted to the Secretary of State in subsection (f) of such section. For purposes of subsection (g) of such section, a Peace Corps representative shall be deemed to be a principal representative of the United States.

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#### PEACE CORPS EMPLOYEES

SEC. 7. (a)(1) For the purpose of performing functions under this Act outside the United States, the President may employ or assign persons, or authorize the employment or assignment of officers or employees of agencies of the United States Government [ , who shall receive compensation at any of the rates provided for persons appointed to the Foreign Service Reserve and Staff under the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.) ] *which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates established under section 402 or 403 of the Foreign Service Act of 1980, together with allowances and benefits thereunder; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of the employment or assignment exceeds thirty months, to the same benefits as are provided by section [528] 310 of that Act for persons appointed to the Foreign Service [Reserve, and the provisions of section 1005 of that Act shall apply in the case of such persons, except that policymaking officials shall not be subject to that part of section 1005 which prohibits political tests;]*.

[ (2) The President may utilize such authority contained in the Foreign Service Act of 1946, as amended, relating to Foreign Service

Reserve officers, Foreign Service staff officers and employees, alien clerks and employees, and other United States Government officers and employees apart from Foreign Service officers as he deems necessary to carry out functions under this Act; except that (A) no Foreign Service Reserve or staff appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances personally approves an extension of not more than one year on an individual basis; and (B) no person whose Foreign Service Reserve or staff appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to his preceding tour of duty. Such provisions of that Act as the President deems appropriate shall apply to persons appointed or assigned under this paragraph, including in all cases, the provisions of section 528 of that Act: *Provided, however,* That the President may by regulation make exceptions to the application of section 528 in cases in which the period of the appointment or assignment exceeds thirty months: *Provided further,* That Foreign Service Reserve officers appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe: *Provided further,* That under such regulations as the President may prescribe persons who are to perform duties of a more routine nature than are generally performed by Foreign Service staff officers and employees of class 10 may be appointed to an unenumerated class of Foreign Service staff officers and employees ranking below class 10 and be paid basic compensation at rates lower than those of class 10; and ]

*(2) In order to employ such individuals as may be necessary to perform duties that reasonably require availability for worldwide assignment, the President may utilize such authority contained in the Foreign Service Act of 1980 relating to members of the Foreign Service and other United States Government officers and employees as the President deems necessary to carry out functions under this Act, except that—*

*(A) no Foreign Service appointment or assignment under this paragraph shall be for a period of more than five years unless the Director of the Peace Corps, under special circumstances, personally approves an extension of not more than one year on an individual basis; and*

*(B) no individual whose Foreign Service appointment or assignment under this paragraph has been terminated shall be reappointed or reassigned under this paragraph before the expiration of a period of time equal to the preceding tour of duty of that individual.*

*Such provisions of the Foreign Service Act of 1980 as the President deems appropriate shall apply to individuals appointed or assigned under this paragraph, including in all cases, the provisions of section 310 of that Act, except that (i) the President may by regulation make exceptions to the application of section 310 in cases in which the period of the appointment or assignment exceeds thirty months and (ii) members of the Foreign Service appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe.*

\* \* \* \* \*

(4) [Until such time as the Congress enacts Foreign Service personnel reform legislation which amends or otherwise supersedes this paragraph, a person who has received a Foreign Service Reserve or staff appointment or assignment under this subsection may, not later than three years after the effective date of this paragraph or] *An individual who has received an appointment or assignment in the Foreign Service under this subsection may, not later than September 30, 1982, or three years after separation from such appointment or assignment, whichever is later, be appointed to a position in any United States department, agency, or establishment—*

(A) in the competitive service under title 5, United States Code, without competitive examination and in accordance with such regulations and conditions consistent with this subsection as may be prescribed by the Director of the Office of Personnel Management, or

(B) in an established merit system in the excepted service, if such [person] *individual* (i) served satisfactorily under the authority of this subsection, as certified by the President, for not less than thirty-six months on a [substantially] continuous basis *without a break in service of more than three days*, and (ii) is qualified for the position in question.

[(b) The President is authorized to prescribe by regulation standards or other criteria for maintaining adequate performance levels for persons appointed or assigned for the purpose of performing functions under this Act outside the United States pursuant to subsection (a) (2) of this section and section 527(c) (2) of the Mutual Security Act of 1954, as amended, and may, notwithstanding any other law, separate persons who fail to meet such standards or other criteria, and also may grant such persons severance benefits of one month's salary for each year of service, but not to exceed one year's salary at the then current salary rate of such persons.]

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#### EXPERTS AND CONSULTANTS

SEC. 13. (a) Experts and consultants or organizations thereof may, as authorized by Section 3109 of title 5, United States Code, be employed by the President for the performance of functions under this Act, and individuals so employed may be compensated at rates not in excess of the per diem equivalent of the highest rate payable under section 5332 of title 5, United States Code, and while away from their homes or regular places of business, they may be paid actual travel expenses and per diem in lieu of subsistence and other expense at the applicable rate prescribed in the Standardized Government Travel Regulations, as amended from time to time, while so employed: *Provided*, That contracts for such employment may be renewed annually.

(b) Service of an individual as a member of the Council authorized to be established by section 12 of this Act or as an expert or consultant under subsection (a) of this section shall not be considered as employment or holding of office or position bringing such individual within the provisions of sections 3323(b) and 8344 of title 5, United States Code, [section 872 of the Foreign Service Act of 1946, as amended] *section 824 of the Foreign Service Act of 1980*, or any other law limit-

ing the reemployment of retired officers or employees or governing the simultaneous receipt of compensation and retired pay or annuities, subject to section 5532 of title 5, United States Code.

DETAIL OF PERSONNEL TO FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

SEC. 14. (a) In furtherance of the purposes of this Act, the head of any agency of the United States Government is authorized to detail, assign, or otherwise make available any officer or employee of his agency (1) to serve with, or as a member of, the international staff of any international organization, or (2) to any office or position to which no compensation is attached with any foreign government or agency thereof: *Provided*, That such acceptance of such office or position shall in no case involve the taking of an oath of allegiance to another government.

(b) Any such officer or employee, while so detailed or assigned, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned, and he shall continue to receive compensation, allowances, and benefits from funds authorized by this Act. He may also receive, under such regulations as the President may prescribe, representation allowances similar to those allowed under [section 901 of the Foreign Service Act of 1946 (22 U.S.C. 1131)] *section 905 of the Foreign Service Act of 1980*. The authorization of such allowances and other benefits, and the payment thereof out of any appropriations available therefor, shall be considered as meeting all of the requirements of section 5536 of title 5, United States Code.

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UTILIZATION OF FUNDS

SEC. 15. (a) Funds made available for the purposes of this Act may be used for compensation, allowances and travel of employees, including *members of the Foreign Service* [personnel] whose services are utilized primarily for the purposes of this Act, for printing and binding without regard to the provisions of any other law, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of employees) without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish the purposes of this Act.

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FOREIGN ASSISTANCE ACT OF 1961

\* \* \* \* \*  
SEC. 625. EMPLOYMENT OF PERSONNEL.—(a) \* \* \*

\* \* \* \* \*  
[(d) For the purposes of performing functions under this Act outside the United States the President may—

[(1) employ or assign persons, or authorize the employment or assignment of officers or employees by agencies of the United States Government, who shall receive compensation at any of the rates provided for the Foreign Service Reserve and Staff by the Foreign Service Act of 1946, as amended (22 U.S.C. 801 et seq.), together with allowances and benefits thereunder; and persons so employed or assigned shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 528 of that Act for persons appointed to the Foreign Service Reserve, and the provisions of section 1005 of that Act shall apply in the case of such persons, except that policy-making officials shall not be subject to that part of section 1005 of that Act which prohibits political tests; and

[(2) utilize such authority, including authority to appoint and assign personnel for the duration of operations under this Act, contained in the Foreign Service Act of 1946, as amended, as the President deems necessary to carry out functions under this Act; and such provisions of the Foreign Service Act of 1946, as amended, as the President deems appropriate shall apply to personnel appointed or assigned under this paragraph, including in all cases the provisions of section 528 of that Act: *Provided, however*, That the President may by regulation make exceptions to the application of section 528 in cases in which the period of the appointment or assignment exceeds thirty months: *Provided further*, That Foreign Service Reserve officers appointed or assigned pursuant to this paragraph shall receive within-class salary increases in accordance with such regulations as the President may prescribe: *Provided further*, That, whenever the President determines it to be important for the purposes of this Act, the President may initially assign personnel under this paragraph for duty within the United States for a period not to exceed two years for the purpose of preparation for assignment outside the United States.]

*(d) For the purpose of performing functions under this Act outside the United States, the President may employ or assign individuals, or may authorize the employment or assignment of officers or employees by agencies of the United States Government which are not authorized to utilize the Foreign Service personnel system, who shall receive compensation at any of the rates provided for under section 402 or section 403 of the Foreign Service Act of 1980, together with allowances and benefits under that Act. Individuals so employed or assigned shall be entitled, except to the extent that the President may*



*specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by section 310 of that Act for individuals appointed to the Foreign Service.*

[(e) The President is authorized to prescribe by regulation standards or other criteria for maintaining adequate performance levels for personnel appointed or assigned pursuant to paragraph (2) of subsection (d) of this section and section 527(c)(2) of the Mutual Security Act of 1954, as amended, and may, notwithstanding any other law, but subject to an appropriate administrative appeal, separate employees who fail to meet such standards or other criteria, and also may grant such personnel severance benefits of one month's salary for each year's service, but not to exceed one year's salary at the then current salary rate of such personnel.]

[(g) The principles regarding foreign language competence set forth in section 578 of the Foreign Service Act of 1946, as amended (22 U.S.C. 801), shall be applicable to personnel carrying out functions under this Act and the Secretary of State shall make appropriate designations and standards for such personnel.]

[(j) The President may appoint or assign a United States citizen to be representative of the United States to the Inter-American Committee on the Alliance for Progress and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. Such person may be compensated at a rate not to exceed that authorized for a chief of mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended.

[(k) (1) In accordance with such regulations as the President may prescribe, the following categories of personnel who serve in the agency primarily responsible for administering part I of this Act shall become participants in the Foreign Service Retirement and Disability System:

[(A) persons serving under unlimited appointments in employment subject to subsection (d) (2) of this section as Foreign Service Reserve officers and as Foreign Service staff officers and employees; and

[(B) a person serving in a position to which he was appointed by the President, whether with or without the advice and consent of the Senate, if (i) such person shall have served previously under an unlimited appointment pursuant to such subsection (d) (2) or a comparable provision of predecessor legislation to this Act, and (ii) following service specified in clause (i) of this subparagraph, such person shall have served continuously with such agency or its predecessor agencies only in positions established under the authority of sections 624(a) and 631(b) or comparable provisions of predecessor legislation to this Act.

<sup>7</sup> Subsection (k) repeal effective Jan. 1, 1982.

[(2) Upon becoming a participant in the Foreign Service Retirement and Disability System any such officer or employee shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended. Thereafter, compulsory contributions will be made with respect to each such participating officer or employee in accordance with the provisions of section 811 of the Foreign Service Act of 1946, as amended.

[(3) The provisions of section 636 and title VIII of the Foreign Service Act of 1946, as amended, shall apply to participation in the Foreign Service Retirement and Disability System by any such officer or employee.

[(4) If an officer who becomes a participant in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection is appointed by the President, by and with the advice and consent of the Senate, or by the President alone, to a position in any agency of the United States Government, any United States delegation or mission to any international organization, in any international commission, or in any international body, such officer shall not, by virtue of the acceptance of such an appointment, lose his status as a participant in the system.

[(5) Any such officer or employee who becomes a participant in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection shall be mandatorily retired (A) at the end of the month in which he reaches age seventy, or (B) earlier if, during the third year after the effective date of this subsection, he attains age sixty-four or if he is over age sixty-four; during the fourth year at age sixty-three; during the fifth year at age sixty-two; during the sixth year at age sixty-one; and thereafter at the end of the month in which he reaches age sixty. However, no participant shall be mandatorily retired under this paragraph while serving in a position to which appointed by the President, by and with the advice and consent of the Senate. Any participant who completes a period of authorized service after reaching the mandatory retirement age specified in this paragraph shall be retired at the end of the month in which such service is completed.

[(6) Whenever the President deems it to be in the public interest, he may extend any participant's service for a period not to exceed five years after the mandatory retirement date of such officer or employee.

[(7) This subsection shall become effective on the first day of the first month which begins more than one year after the date of its enactment, except that any officer or employee who, before such effective date, meets the requirements for participation in the Foreign Service Retirement and Disability System under paragraph (1) of this subsection may elect to become a participant before the effective date of this subsection. Such officer or employee shall become a participant on the first day of the second month following the date of his application for earlier participation. Any officer or employee who becomes a participant in the system under the provisions of paragraph (1) of this subsection, who is age fifty-seven or over on the effective date of this subsection, may retire voluntarily at any time before mandatory retirement under paragraph (5) of this subsection and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

[(8) Any officer or employee who is separated for cause while a participant in the Foreign Service Retirement and Disability System pursuant to this subsection, shall be entitled to benefits in accordance with section 637 (b) and (d) of the Foreign Service Act of 1946, as amended. The provisions of subsection (e) of this section shall apply to participants in lieu of the provisions of sections 633 and 634 of the Foreign Service Act of 1946, as amended.]

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SEC. 629. STATUS OF PERSONNEL DETAILED.—(a) Any officer or employee, while assigned or detailed under section 627 or 628 of this Act, shall be considered, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits as such, an officer or employee of the United States Government and of the agency of the United States Government from which detailed or assigned, and he shall continue to receive compensation, allowances, and benefits from funds appropriated to that agency or made available to that agency under this Act.

(b) Any officer or employee assigned, detailed, or appointed under section 627, 628, 631, or 624(d) of this Act is authorized to receive under such regulations as the President may prescribe, representation allowances similar to those allowed under [section 901 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1131)] *section 905 of the Foreign Service Act of 1980*. The authorization of such allowances and other benefits and the payment thereof out of any appropriations available therefor shall be considered as meeting all the requirements of section 5536 of title 5 of the United States Code.

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SEC. 631. MISSIONS AND STAFFS ABROAD.—(a) The President may maintain special missions or staffs outside the United States in such countries and for such periods of time as may be necessary to carry out the purposes of this Act. Each such special mission or staff shall be under the direction of a chief.

(b) The chief and his deputy of each special mission or staff carrying out the purposes of part I shall be appointed by the President, and may, notwithstanding any other law, be removed by the President at his discretion. [Such chief shall be entitled to receive (1) in cases approved by the President, the same compensation and allowances as a chief of mission, class 3, or a chief of mission, class 4, within the meaning of the Foreign Service Act of 1946, as amended, or (2) compensation and allowances in accordance with section 625(d), as the President shall determine to be appropriate.] *Such chief shall be entitled to receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.*

(c) The President may appoint any United States citizen who is not an employee of the United States Government or may assign any United States citizen who is a United States Government employee to serve as Chairman of the Development Assistance Committee or any successor committee thereto of the Organization for Economic Cooperation and Development upon election thereto by members of said Committee, and, in his discretion, may terminate such appointment or assignment, notwithstanding any other provision of law. [Such person may receive such compensation and allowances as are authorized

by the Foreign Service Act of 1946, as amended, not to exceed those authorized for a chief of mission, class 2, within the meaning of said Act, as the President may determine.] *Such person may receive such compensation and allowances as are authorized by the Foreign Service Act of 1980, not to exceed those authorized for a chief of mission (as defined in section 102(a)(3) of that Act), as the President shall determine to be appropriate.* Such person may also, in the President's discretion, receive any other benefits and perquisites available under this Act to chiefs of special missions or staffs outside the United States established under this section.

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## ARMS CONTROL AND DISARMAMENT ACT

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### [FOREIGN SERVICE RESERVE AND STAFF OFFICERS]

[SEC. 42. The Secretary of State may authorize the Director to exercise, with respect to Foreign Service Reserve officers and Foreign Service Staff officers and employees appointed or employed for the Agency, the following authority: (1) The authority available to the Secretary of State under the Foreign Service Act of 1946, as amended, (2) the authority available to the Secretary under any other provision of law pertaining specifically, or generally applicable, to such officers or employees, and (3) the authority of the Board of Foreign Service pursuant to the Foreign Service Act of 1946, as amended.]

### FOREIGN SERVICE PERSONNEL

*SEC. 42. (a) The Secretary of State may authorize the Director to exercise, with respect to members of the Foreign Service appointed or employed for the Agency—*

*(1) the authority available to the Secretary under the Foreign Service Act of 1980, and*

*(2) the authority available to the Secretary under any other provisions of law pertaining specifically or applicable generally to members of the Foreign Service.*

*(b) Limited appointments of members of the Foreign Service for the Agency may be extended or renewed, notwithstanding section 309 of the Foreign Service Act of 1980, so long as the service of the individual under such appointment does not exceed ten consecutive years without a break in service of at least one year.*

\* \* \* \* \*

### USE OF FUNDS

SEC. 48. Appropriations made to the Director for the purposes of this Act, and transfers of funds to him by other Government agencies for such purposes, shall be available to him to exercise any authority granted him by this Act, including, without limitation, expenses of printing and binding without regard to the provisions of section 11 of the Act of March 1, 1919 (44 U.S.C. 111); purchase or hire of one passenger motor vehicle for the official use of the Director without regard to the limitations contained in section 78(c) of title 5 of the

United States Code; entertainment and official courtesies to the extent authorized by appropriation; expenditures for training and study; expenditures in connection with participation in international conferences for the purposes of this Act; and expenses in connection with travel of personnel outside the United States, including transportation expenses of dependents, household goods, and personal effects, and expenses authorized by the Foreign Service Act of [1946, as amended,] 1980 not otherwise provided for.

\* \* \* \* \*

FOREIGN RELATIONS AUTHORIZATION ACT,  
FISCAL YEAR 1979

\* \* \* \* \*

TITLE IV—FOREIGN SERVICE AND  
OTHER PERSONNEL

[EMPLOYMENT OF FAMILY MEMBERS OVERSEAS

[SEC. 401. (a) In order to expand employment opportunities for family members of the United States Government personnel assigned abroad, the President shall—

[(1) seek to conclude such bilateral and multilateral agreements as will facilitate the employment of such family members in foreign economies; and

[(2) direct that at any United States post abroad where a qualified family member is available to be hired, consideration shall be given, when continuity over a long term is not a significant consideration, to converting a vacant alien position to an American position for staffing by that family member.

[(b) (1) The section heading of section 444 of the Foreign Service Act of 1946 (22 U.S.C. 889) is amended to read as follows: "LOCAL COMPENSATION PLANS".

[(2) Subsection (a) (1) of such section is amended to read as follows:

["(a) (1) The Secretary shall, in accordance with such regulations as he may prescribe, establish compensation plans for alien employees of the Service and for United States citizens employed by the Department abroad who are family members of Government personnel serving in the same country. Such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest. Compensation plans established pursuant to this section may include provision for leave of absence with pay for alien employees in accordance with prevailing law and employment practices in the locality of employment, without regard to section 6310 of title 5, United States Code.".

[(3) Subsection (b) of such section is amended by striking out "alien employee programs" and inserting in lieu thereof "employment programs for aliens, and for family members of Government personnel serving abroad,".

[(4) Such section is further amended by adding at the end thereof the following new subsection:

["(d) The Secretary of State shall prescribe regulations authorizing the employment abroad, and providing for the compensation of family members of Government personnel."]

[(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report describing fully and completely the actions taken by the Department of State pursuant to this section and section 413 of the Foreign Relations Authorization Act, Fiscal Year 1978.]

\* \* \* \* \*

[REVIEW OF FOREIGN SERVICE PERSONNEL REQUIREMENTS AND  
COMPENSATION

[SEC. 413. (a) The Congress finds that—

[(1) since 1960, the United States has expanded its diplomatic representation abroad from approximately eighty countries to approximately one hundred and thirty countries;

[(2) despite such expanded responsibilities, and despite a significantly increased consular workload in all countries in which the United States is represented, the total number of personnel of the Department of State has remained approximately the same; and

[(3) although the responsibilities and necessary qualifications for individual Foreign Service positions continue to change, compensation for Foreign Service personnel continues to be linked to compensation for General Schedule employees at a level established years ago.

[(b) It is therefore the sense of the Congress that the Secretary of State should conduct a thorough review of the personnel needs of the Foreign Service and of the suitability of the current compensation system.

[(c) Not later than January 20, 1979, the Secretary of State shall transmit to the Speaker of the House of Representatives and to the chairman of the Committee on Foreign Relations of the Senate a report setting forth fully and completely—

[(1) the results of such review; and

[(2) such recommendations as the Secretary finds appropriate.]

\* \* \* \* \*

SECTION 413 OF THE FOREIGN RELATIONS AUTHORI-  
ZATION ACT, FISCAL YEAR 1978

[EMPLOYMENT OF FOREIGN SERVICE SPOUSES

[SEC. 413. (a) The Secretary of State shall, when employing persons to fill jobs outside the United States to which career Foreign Service personnel are not customarily assigned, including temporary and local hire jobs, give equal consideration to employing qualified family members of United States Government employees (including family members of Foreign Service personnel) assigned to duties outside the

United States. Such employment may not be used to avoid fulfilling the need for fulltime career positions.

[(b) To facilitate the employment by the Department of State, or by other employers, of the spouses of Foreign Service personnel, the Secretary may—

[(1) provide regular career counseling for such spouses;

[(2) maintain a centralized system for cataloging their skills and the various, governmental and nongovernmental, overseas employment opportunities available to such spouses; and

[(3) otherwise assist such spouses in obtaining overseas employment.

[(c) Any member of a family of Foreign Service personnel may accept gainful employment in a foreign country unless such employment—

[(1) would violate any law of such country or of the United States; or

[(2) Could, as certified in writing by the Chief of the United States Diplomatic Mission in such country, damage the interest of the United States.

[(d) Not later than January 1, 1978, the Secretary of State shall transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate a report on actions the Department of State has taken to carry out the provisions of this section.]

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## FOREIGN RELATIONS AUTHORIZATION ACT, FISCAL YEAR 1977

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### TITLE I—STATE DEPARTMENT

\* \* \* \* \*

#### [STATE DEPARTMENT/UNITED STATES INFORMATION AGENCY PERSONNEL SYSTEM

[SEC. 117. It is the sense of Congress that the proliferation of personnel categories within the State Department and the United States Information Agency (the several categories being characterized by various standards for hiring, tenure, and pay) has resulted in a personnel system susceptible to inefficiency, inequity, and abuse. Therefore, within one hundred and eighty days of the enactment of this Act, the Secretary of State shall transmit to Congress a comprehensive plan for the improvement and simplification of this system, such plan to include a reduction in the number of personnel categories, and proposed legislation if necessary.]

\* \* \* \* \*

#### [APPOINTMENT OF AMBASSADORS

[SEC. 120. It is the sense of the Congress that a greater number of positions of ambassador should be occupied by career personnel in the Foreign Service.]

TITLE V—FOREIGN SERVICE RETIREMENT

\* \* \* \* \*

【CONVERSION TO FOREIGN SERVICE RETIREMENT SYSTEM

【SEC. 522. (a) In accordance with such regulations as the President may prescribe, all Foreign Service staff officers and employees with unlimited appointments who (1) have been appointed by the Secretary of State or the Director, United States Information Agency, and (2) are participants in the Civil Service Retirement and Disability System on the effective date of this section, shall be transferred to the Foreign Service Retirement and Disability System effective on such date. Their retirement contributions shall be transferred in accordance with section 811 of the Foreign Service Act of 1946, as amended by this title.

【(b) Mandatory retirement at age sixty as prescribed in section 632 of the Foreign Service Act of 1946, as amended by this title, shall not apply to any Foreign Service staff officer or employee who becomes a participant in the Foreign Service Retirement and Disability System pursuant to subsection (a) of this section until such officer or employee completes ten years of continuous service in the Foreign Service exclusive of military service, in the Department of State or ten years of such continuous service in the United States Information Agency.

【(c) Any Foreign Service staff officer or employee who becomes a participant in the Foreign Service Retirement and Disability System pursuant to subsection (a) of this section who is age fifty-seven or over on the effective date of this section may retire voluntarily at any time prior to mandatory retirement and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended by this title.

【(d) Section 9(b) of the Act of August 20, 1968 (82 Stat. 812), is repealed on the effective date of this section.】

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SECTION 6 OF THE DEPARTMENT OF STATE APPROPRIATIONS AUTHORIZATION ACT OF 1973

【AMBASSADORS AND MINISTERS

【SEC. 6. From and after the date of enactment of this Act, each person appointed by the President as ambassador or minister shall, at the time of his nomination, file with the Committee on Foreign Relations of the Senate and the Speaker of the House of Representatives a report of contributions made by such person and by members of his immediate family during the period beginning on the first day of the fourth calendar year preceding the calendar year of his nomination and ending on the date of his nomination, which report shall be verified by the oath or affirmation of such person, taken before any officer authorized to administer oaths. The Chairman of the Committee on Foreign Relations of the Senate shall have printed in the Congressional Record each such report. As used in this section, the term "contribution" has the same meaning given such term by section 301(e) of the Federal Election Campaign Act of 1971, and the term "immediate



family" means a person's spouse, and any child, parent, grandparent, brother, or sister of such person and the spouses of any of them.]

\* \* \* \* \*

### THE ACT OF AUGUST 20, 1968

**[AN ACT** To promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps.

*[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there is hereby established a category of officers of the International Communication Agency (hereinafter referred to as "the Agency") to be known as Foreign Service information officers.

#### **[STATEMENT OF POLICY**

**[SEC. 2.** It is the sense of the Congress that the establishment of a permanent career service for officers of the Agency who serve our country throughout the world in a vital function of the foreign relations of the United States is essential to enable the Director of the International Communication Agency (hereinafter referred to as "the Director") to carry out effectively such functions and responsibilities assigned to the Agency.

#### **[STATEMENT OF PURPOSES**

**[SEC. 3.** The Congress of the United States hereby declares that the purposes of this Act are—

**[(a)** to provide a statutory basis necessary for a worldwide career officer personnel system designed to meet the continuing needs of both the Agency and those qualified citizens who shall serve as Foreign Service information officers in this vital activity;

**[(b)** to give the Director the full range of personnel authority necessary to establish and administer the Foreign Service Information Officer Corps;

**[(c)** to regularize the personnel system of the Agency by establishing a career service in which qualified Foreign Service information officers may be recruited, trained, and serve;

**[(d)** to assure maximum efficiency and flexibility in the utilization of the talents of Foreign Service information officers; and

**[(e)** to accord Foreign Service information officers the same rights and perquisites and to subject them to the same stringent judgment of performance as Foreign Service officers employed under the provisions of the Foreign Service Act of 1946, as amended.

#### **[AUTHORITY OF THE DIRECTOR**

**[SEC. 4.** Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency shall be under the direction and authority of the Director. Authority available to the Secretary of State

with respect to Foreign Service officers, Foreign Service Reserve officers. Foreign Service staff officers and employees, or alien clerks and employees of the Department of State shall be available on the same basis to the Director with respect to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, and alien clerks and employees of the Agency, except as provided in section 11 of this Act.

#### **[POLICIES AND REGULATIONS]**

**[SEC. 5.** The Foreign Service information officer personnel system shall be compatible with the Foreign Service officer personnel system. Toward this end, the Director with respect to the Foreign Service information officer personnel system and the Secretary of State with respect to the Foreign Service officer personnel system, after consultation with such officials as the President may determine, shall promulgate policies and regulations governing such systems. Both systems shall be administered, to the extent practicable, in conformity with general policies and regulations of the Federal Government issued in accordance with law.

#### **[APPOINTMENT AND ASSIGNMENT]**

**[SEC. 6. (a)** Subject to section 4, Foreign Service information officers shall be appointed and assigned at classes and salaries, and in accordance with requirements and procedures, which correspond to those classes, salaries, requirements, and procedures, except with regard to career ambassadors, prescribed by sections 412, 413, 421, 422, 431 (c), 432, 441, 500, 501 (b), 502 (b), 511, 514 through 520, 571 through 575, and 578 of the Foreign Service Act of 1946, as amended.

**[ (b)** The President shall, by and with the advice and consent of the Senate, appoint Career Ministers for Information.

**[ (c)** The Secretary of State may, upon request of the Director, furnish the President with the names of Foreign Service information officers qualified for appointment to the class of Career Minister for Information, together with pertinent information about such officers, but no person shall be appointed into the class of Career Minister for Information who has not been appointed to serve in an Embassy as a Minister for Public Affairs or appointed or assigned to serve in a position which, in the opinion of the Director, is of comparable importance. A list of such positions shall from time to time be published by the Director.

**[ (d)** The per annum salary of a Career Minister for Information shall be the same as that provided by section 412 of the Foreign Service Act of 1946, as amended, for the class of Career Minister.

#### **[PROMOTION]**

**[SEC. 7.** Foreign Service information officers shall be promoted in accordance with the provisions of sections 621 through 623, and 626 of the Foreign Service Act of 1946, as amended, and shall receive within-class salary increases in accordance with section 625 of such Act.

**[SEPARATION AND RETIREMENT**

**[SEC. 8.** Foreign Service information officers shall be separated and retired in accordance with sections 631 through 637 of the Foreign Service Act of 1946, as amended.

**[PARTICIPATION IN THE FOREIGN SERVICE RETIREMENT AND DISABILITY SYSTEM**

**[SEC. 9. (a)** Foreign Service information officers shall be participants in and entitled to the benefits of the Foreign Service retirement and disability system under title VIII of the Foreign Service Act of 1946, as amended, on the same basis as Foreign Service officers. Any such Foreign Service information officer who becomes a participant in such system shall make contributions to the Foreign Service retirement and disability fund on the same basis as Foreign Service officers.

**[(c)** Any such officer or employees who, under the provisions of paragraph (b) of this section, becomes a participant in the Foreign Service retirement and disability system, shall be mandatorily retired for age during the third year after the effective date of that paragraph if he attains age sixty-four or if he is over age sixty-four; during the fourth year at age sixty-three; during the fifth year at age sixty-two; during the sixth year at age sixty-one, and thereafter at age sixty.

**[(d)** Any officer or employee who becomes a participant in the Foreign Service retirement and disability system under the provisions of paragraph (b) of this section who is age fifty-seven or over on the effective date of that paragraph, may retire voluntarily at any time before mandatory retirement under paragraph (c) of this section and receive retirement benefits under section 821 of the Foreign Service Act of 1946, as amended.

**[(e)** The provisions of paragraph (b) of this section becomes effective on the first day of the first month which begins more than one year after the date of enactment of this Act, except that any Foreign Service Staff officer or employee, who at the time this Act becomes effective meets the requirements for participation in the Foreign Service retirement and disability system, may elect to become a participant in the system before the mandatory provisions become effective. Some Foreign Service Staff officers and employees shall become participants effective on the first day of the second month following the date of their application for earlier participation.

**[OTHER APPLICABLE PROVISIONS OF LAW**

**[SEC. 10.** All provisions of the Foreign Service Act of 1946 or of any other law, which apply to Foreign Service officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees of the Department of State and which are not referred to in sections 6 through 9 of this Act, shall be applicable to Foreign Service information officers, Foreign Service Reserve officers, Foreign Service staff officers and employees, or alien clerks and employees, as the case may be, of the Agency.

**[COMMISSIONING AND ASSIGNMENT AS DIPLOMATIC AND CONSULAR OFFICERS**

**[SEC. 11. (a)** The Secretary of State may, upon request of the Director, recommend to the President that Foreign Service information officers or Foreign Service Reserve officers of the Agency be commissioned as diplomatic or consular officers, or both, in accordance with section 512 or 524 of the Foreign Service Act of 1946.

**[(b)** The Secretary of State may, upon request of the Director, assign Foreign Service information officers or Foreign Service Reserve officers of the Agency, commissioned as diplomatic or consular officers, to serve under such commissions in accordance with sections 512 and 514 or section 524 of the Foreign Service Act of 1946.

**[INTERPRETATION AND CONSTRUCTION**

**[SEC. 12.** For the purposes of this Act the term "Foreign Service officer" when used in the Foreign Service Act of 1946, as amended, or in any other provision of law shall be construed to mean "Foreign Service information officer" and the term "Secretary of State" when used with respect to authorities applicable to Foreign Service officers shall be construed to mean the Director of the Internal Communication Agency with respect to Foreign Service information officers.

**[TRANSFER OF AGENCY FOREIGN SERVICE OFFICERS TO FOREIGN SERVICE INFORMATION OFFICER STATUS**

**[SEC. 13.** Agency Foreign Service officers on active service on the effective date of this Act shall, by virtue of this Act, be transferred from the classes in which they are serving on such date to the comparable salaries and classes of Foreign Service information officers established by this Act. Service in the former class shall be considered as constituting service in the new class for the purposes of determining (1) eligibility for promotion, in accordance with the provisions of section 622, (2) liability for separation, in accordance with the provisions of section 633, (3) continuation of probationary status pursuant to section 635, and (4) credit for time served toward in-class promotion in accordance with section 625.

**[VETERANS' PREFERENCE**

**[SEC. 14.** Notwithstanding the provisions of section 3320 of title 5 of the United States Code, the fact that any applicant is a veteran or disabled veteran, as defined in section 2108 (1) or (2) of such title, shall be taken into consideration as an affirmative factor in the selection of applicants for initial appointment as Foreign Service officers or Foreign Service information officers.

**[TENURE OF FOREIGN SERVICE RESERVE OFFICERS**

**[SEC. 15. (a)** Any officer appointed as a Foreign Service Reserve officer after the date of enactment of this Act may serve as such for not more than five years. During such period (no sooner than the expiration of the third year but no later than the expiration of the fifth year) such Foreign Service Reserve officer shall be appointed as a Foreign Service officer, Foreign Service Information officer, For-

Foreign Service Reserve officer with unlimited tenure, Foreign Service Staff officer, or shall be terminated as a Foreign Service Reserve officer.

[(b) Notwithstanding the provisions of sections 522 and 527 of the Foreign Service Act of 1946, as amended, an appointment of any Foreign Service Reserve officer existing on the date of enactment of this Act, may be extended, but not beyond the expiration of the five-year period beginning on such date of enactment.

**[RETIREMENT AND SEPARATION OF FOREIGN SERVICE RESERVE OFFICERS]**

[SEC. 16. (a) In accordance with such regulations as the President may prescribe, any Foreign Service Reserve officer with unlimited tenure shall become a participant in the Foreign Service retirement and disability system and shall make a special contribution to the Foreign Service Retirement and Disability Fund in accordance with the provisions of section 852 of the Foreign Service Act of 1946, as amended. Beginning on the date of enactment of this Act, any Reserve officer referred to in the preceding sentence shall be mandatorily retired for age in accordance with the provisions of subsections (c) and (d) of section 9 of this Act.

[(b) The provisions of sections 633 and 634 of the Foreign Service Act of 1946, as amended, shall apply to Foreign Service Reserve officers with unlimited tenure.

**[PRESENT FOREIGN SERVICE RESERVE OFFICERS]**

[SEC. 17. Any Foreign Service Reserve officer appointed before the date of enactment of this Act who has completed at least three years of continuous and satisfactory service as such on such date of enactment, or who will have completed at least three years of such service before the expiration of the three-year period beginning on such date of enactment, may be appointed as a Foreign Service Reserve officer with unlimited tenure.

**[LIMITATION ON EXTENSION OF FOREIGN SERVICE RESERVE OFFICER APPOINTMENTS]**

[SEC. 18. Paragraph (3) of section 522 of the Foreign Service Act of 1946, as amended, is amended by inserting immediately before the period at the end thereof the following: “; except that the authority contained in this paragraph relating to extending the appointment of any Reserve officer, and to continuing the services of any such Reserve officer by reappointment, shall not be applicable to the Department of State and the United States Information Agency”.

**[EXCLUSION OF CERTAIN AGENCIES]**

[SEC. 19. The provisions of sections 15, 16, and 17 of this Act shall not apply to officers and employees of the Agency for International Development, the Peace Corps, and the Arms Control and Disarmament Agency.]

SECTION 124 OF THE INTERNATIONAL DEVELOPMENT  
AND FOOD ASSISTANCE ACT OF 1977

INSPECTOR GENERAL, FOREIGN ASSISTANCE

SEC. 124. (a) (1) \* \* \*

[(2) The President (A) may assign to the Inspector General, Foreign Service, any of the duties and responsibilities vested by such section 624(d) in the Inspector General, Foreign Assistance, and (B) may authorize the Inspector General, Foreign Service, to exercise such of the authorities granted by such section 624(d) to the Inspector General, Foreign Assistance, as the President determines are necessary to carry out any duties or responsibilities so assigned.]

(b) Section 5315 of title 5, United States Code, is amended by repealing paragraphs (52) and (53).

(c) The amendments made by this section shall take effect on July 1, 1978.

THE ACT OF MAY 21, 1952

[AN ACT To make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system.

*[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any Foreign Service officer who has retired before November 13, 1950, on annuity under the provisions of the Act of May 24, 1924 (43 Stat. 140), as amended, or under the provisions of the Foreign Service Act of 1946 (60 Stat. 999), and who does not come within the purview of section 2 of this Act shall have his annuity increased on the first day of the second month following the month in which this Act is enacted or on the date such annuity commences, whichever is later, in accordance with the following scale:*

[(a) By 25 per centum or \$300, whichever is the lesser, if retirement took place before November 13, 1946;

[(b) By 20 per centum or \$240, whichever is the lesser, if retirement took place on or after November 13, 1946, and before November 13, 1947;

[(c) By 15 per centum or \$180, whichever is the lesser, if retirement took place on or after November 13, 1947, and before November 13, 1948;

[(d) By 10 per centum or \$120, whichever is the lesser, if retirement took place on or after November 13, 1948, and before November 13, 1949; and

[(e) By 5 per centum or \$60, whichever is the lesser, if retirement took place on or after November 13, 1949, and before November 13, 1950: *Provided*, That in no case shall an annuity increased under this Act exceed the largest annuity payable under section 821(a) of the Foreign Service Act of 1946.

[Sec. 2. Any Foreign Service officer who has retired before November 13, 1950, and who has elected or may elect to receive a reduced annuity under the provisions of section 18 of the Act of May 24, 1924

(43 Stat. 144), as amended, or the provisions of sections 821 and 1112 of the Foreign Service Act of 1946 (60 Stat. 1020, 1035), and any widow or other beneficiary of such officer who is receiving or who shall receive a survivorship annuity, shall have the amount of such annuity increased in an amount equal to the percentage differential between the full annuity which the officer would have received prior to the passage of this Act if he had elected to take a full annuity and the amount of the increased full annuity provided for in the first section of this Act. The increase in annuities provided for in this section shall be effective on the first day of the second month following the month in which this Act is enacted or on the effective date such annuities commence, whichever date is later.】

#### THE ACT OF SEPTEMBER 2, 1958

【AN ACT To provide for adjustments in the annuities under the Foreign Service retirement and disability system.

【*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the annuity of each retired officer who, on August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or before January 31, 1958, shall be increased by 10 per centum.*

【(b) The annuity otherwise payable from the Foreign Service Retirement and Disability Fund to—

【(1) each survivor annuitant who, on August 1, 1958, is receiving or entitled to receive an annuity based on service which terminated on or before January 31, 1958, and

【(2) each person granted an annuity in accordance with section 5 of the Act of May 1, 1956 (70 Stat. 125), shall be increased by 10 per centum.

【(c) The increases provided by subsections (a) and (b) of this section shall become effective on the first day of the second calendar month following the enactment of this Act.

【SEC. 2. The annuity of each retired officer who, on or after August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or after February 1, 1958, shall be increased effective on the first day of the second calendar month following enactment of this Act or on the commencing date of annuity, whichever is later, in accordance with the following schedule :

【If annuity between—	Annuity shall be increased by—
【February 1, 1958 and June 30, 1959-----	8 per centum
【July 1, 1959 and June 30, 1960-----	6 per centum
【July 1, 1960 and June 30, 1961-----	4 per centum
【July 1, 1961 and June 30, 1962-----	2 per centum

【SEC. 3. The annuity of any survivor annuitant who, on or after August 1, 1958, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund, based on service which terminated on or after February 1, 1958, shall be increased effective on the first day of the second calendar month following en-

actment of this Act or on the commencing date of annuity, whichever is later, in accordance with the following schedule:

If annuity between—	Annuity shall be increased by—
February 1, 1958 and June 30, 1959.....	8 per centum
July 1, 1959 and June 30, 1960.....	6 per centum
July 1, 1960 and June 30, 1961.....	4 per centum
July 1, 1961 and June 30, 1962.....	2 per centum

SEC. 4. No increase provided by this Act shall be computed on any additional annuity purchased with voluntary contributions pursuant to the provisions of section 881 of the Foreign Service Act of 1946, as amended.

SEC. 5. No annuity of a retired officer shall be increased under any section of this Act in an amount in excess of \$500 per annum. No annuity of a survivor annuitant shall be increased under any section of this Act in an amount in excess of \$250 per annum.]

# THE ACT OF JULY 12, 1960

AN ACT To provide for adjustments in the annuities under the Foreign Service retirement and disability system.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) the annuity of each person heretofore or hereafter retired who, on or before June 30, 1962, is receiving or entitled to receive an annuity from the Foreign Service Retirement and Disability Fund shall be increased by 10 per centum.

(b) The annuity of each widow survivor annuitant who, on or before June 30, 1962, is receiving a survivor annuity from the Foreign Service Retirement and Disability Fund is hereby increased by 10 per centum, or so much in excess thereof as will enable any such widow to receive a minimum annuity of \$2,400 per annum.

(c) No increase provided by this section shall be computed on any additional annuity purchased with voluntary contributions pursuant to the provisions of section 881 of the Foreign Service Act of 1946, as amended.

(d) The increases provided by this section shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act, or on the commencing date of the annuity, whichever is later.

SEC. 2. (a) Section 5 of Public Law 503, Eighty-fourth Congress, is amended to read as follows:

SEC. 5. In any case where a participant under the Foreign Service Retirement and Disability System died before August 29, 1954, leaving a widow who is not entitled to receive an annuity under the System and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State is authorized and directed to grant such widow an annuity of \$2,400 per annum."

(b) The amendment made by this section shall take effect on the first day of the first month which begins more than thirty days after the date of enactment of this Act.]



## FOREIGN SERVICE ANNUITY ADJUSTMENT ACT OF 1965

**[AN ACT To provide for adjustments in annuities under the Foreign Service retirement and disability system.**

**[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,** That this Act may be cited as the "Foreign Service Annuity Adjustment Act of 1965".

**[SEC. 2. (a)** Annuities paid from the Foreign Service retirement and disability fund on the date of enactment of this Act, based on service performed by annuitants which terminated prior to October 16, 1960, shall be adjusted under the provisions of section 821(b) of the Foreign Service Act of 1946, as in effect on October 16, 1960, relating to the formula for reduction in annuity to provide for a surviving widow, as though such provisions had been in effect on the date of the annuitant's separation from the Service, or, in the case of any annuitant who makes an election under paragraph (1) or (2) of this subsection, in accordance with the following:

**[(1)** An annuitant who at time of retirement was married to a wife who is still living (and to whom he is married on the date of enactment of this Act), and for whom he has not elected a widow survivor benefit before such date of enactment, may, within one hundred and twenty days after such date of enactment, elect to provide a widow survivor benefit of \$2,400 per annum. The annuity of an annuitant who makes an election under this paragraph shall be reduced by \$300 per annum.

**[(2)** An annuitant who at time of retirement was married to a wife who is still living (and to whom he is married on the date of enactment of this Act) and for whom he has elected, before such date of enactment, a widow survivor benefit of less than \$2,400 per annum, may, within one hundred and twenty days after such date of enactment, elect to provide a widow survivor benefit of \$2,400 per annum. The annuity of an annuitant who makes an election under this paragraph shall be reduced by \$300 per annum in lieu of any reductions of his annuity in effect on the date of enactment of this Act because of elections made by him before such date of enactment in connection with the provision of a widow survivor annuity.

**[(b)** If an annuitant referred to in paragraph (a) (1) or (a) (2) of this section dies within one hundred and twenty days after the date of enactment of this Act, without having made an election under such paragraph (a) (1) or (a) (2), his surviving widow shall be paid the greater of—

**[(1)** \$2,400; or

**[(2)** the annuity to which she may be entitled from the Foreign Service retirement and disability fund as his widow under any provision of law in effect on the date of the death of the annuitant.

**[(c)** Notwithstanding the foregoing provisions of this section, each annuitant, who makes an election under paragraph (1) of subsection (a) shall pay into the Foreign Service retirement and disability fund an amount equal to the amount by which (A) the total annuity received by the annuitant prior to the effective date of any adjustment in his annuity pursuant to such election exceeds (B) the total annuity which he would have received prior to such date had he elected a sur-

vivor annuity of \$2,400 per annum at the time of such retirement. The Secretary of State may permit the payment required by this subsection to be made in installments of not less than \$25 per month.

[SEC. 3. If a former participant whose service as a class 4 Foreign Service officer was terminated prior to October 16, 1960, and who elected a deferred annuity, dies before becoming eligible to receive an annuity, the benefit of the surviving widow, if she was eligible under the terms of the law in effect upon his separation from the Service, shall not be less than \$2,400 per annum.

[SEC. 4. In any case in which an annuitant who retired prior to October 16, 1960, dies before the date of enactment of this Act, leaving a widow to whom he was married at time of retirement who is not entitled to receive an annuity under the Foreign Service retirement and disability system, and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State shall grant such widow, whether remarried or not, an annuity of \$2,400 per annum.

[SEC. 5. The annuity of each widow survivor annuitant who, on the date of enactment of this Act, is receiving a survivor annuity from the Foreign Service retirement and disability fund of less than \$2,400 per annum is hereby increased to \$2,400 per annum.

[SEC. 6. The annuity benefits elected or provided with respect to any widow under section 2, 3, 4, or 5 of this Act shall be in lieu of any annuity benefits to which such widow otherwise would be entitled as the widow of the Foreign Service officer with respect to whom such annuity benefits are so elected or provided.

[SEC. 7. Any increase, adjustment, or grant of an annuity under section 2, 4, or 5 of this Act shall commence on the first day of the month following the expiration of the one-hundred-and-twenty-day period beginning on the date of enactment of this Act, and the monthly rate payable shall be fixed at the nearest dollar.

[SEC. 8. Annuity benefits provided by this Act shall be paid from the Foreign Service retirement and disability fund; except that, no part of such fund shall be applied toward the payment of any benefits under section 2, 4, or 5 of this Act until an appropriation is made to such fund in an amount which the Secretary of the Treasury estimates to be necessary to prevent an increase in the unfunded liability to such fund for the first fiscal year during which such benefits are payable.

[SEC. 9. Title VIII of the Foreign Service Act of 1946, as amended, is amended as follows:

[(1) Section 821(b) of such Act (22 U.S.C. 1076(b)) is amended to read as follows:

["(b) (1) At the time of retirement, any married female participant may elect to receive a reduced annuity and to provide for an annuity payable to her husband, commencing on the date following such participant's death and terminating upon the death of such surviving husband. The annuity payable to the surviving husband after such participant's death shall be 50 per centum of the amount of the participant's annuity computed as prescribed in paragraph (a) of this section, up to the full amount of such annuity specified by her as the base for the survivor benefits. The annuity of the participant making such election shall be reduced by 2½ per centum of any amount up to \$2,400 she specifies as the base for the survivor benefit plus 10 per centum of any amount over \$2,400 so specified.

["(2) At the time of retirement, the annuity of each married male participant computed as prescribed in paragraph (a) of this section shall be reduced by \$300 to provide for his surviving wife a minimum annuity of \$2,400, except that, if his annuity is more than \$4,800, he may elect up to 50 per centum of such annuity for his surviving wife, and if such election is made, his annuity shall be further reduced by 10 per centum of the difference between \$4,800 and the base he specifies for the survivor benefit."

["(2) The first sentence of section 832(b) of such Act (22 U.S.C. 1082(b)) is amended by inserting immediately before the period at the end thereof the following: "; except that the annuity of any widow shall not be less than \$2,400".

["(3) At the end of title VIII of such Act add the following:

["PART J—COST-OF-LIVING ADJUSTMENTS OF ANNUITIES

["SEC. 882. (a) On the basis of determination made by the Civil Service Commission pursuant to section 18 of the Civil Service Retirement Act, as amended, pertaining to per centum change in the price index, the following adjustments shall be made:

["(1) Effective April 1, 1966, if the change in the price index from 1962 to 1965 shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2, 1965, shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

["(2) Effective April 1 of any year other than 1966 after the price index change shall have equaled a rise of at least 3 per centum, each annuity payable from the fund which has a commencing date earlier than January 2 of the preceding year shall be increased by the per centum rise in the price index adjusted to the nearest one-tenth of 1 per centum.

["(b) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

["(1) Effective from the date of the first increase under this section, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 821(c)), which annuity commenced the day after the annuitant's death, shall be increased as provided in subsection (a) (1) or (a) (2) if the commencing date of annuity to the annuitant was earlier than January 2 of the year preceding the first increase.

["(2) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 821(c)), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

["(3) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 821(c), the items \$600, \$720, \$1,800, and \$2,160 appearing in section 821(c) shall be increased by the total per centum increase allowed and in force under this section and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 821(c) shall be increased by the total per centum increase

allowed and in force under this section to the annuitant at death. Effective from the date of the first increase under this section, the provisions of this paragraph shall apply as if such first increase were in effect with respect to computation of a child's annuity under section 821(c) which commenced between January 2 of the year preceding the first increase and the effective date of the first increase.

["(c) No increase in annuity provided by this section shall be computed on any additional annuity purchased at retirement by voluntary contributions.

["(d) No increase in annuity provided by this section shall apply to amounts paid under authority of section 5 of Public Law 84-503, as amended, section 4 of the Foreign Service Annuity Adjustment Act of 1965, or any other law authorizing annuity grants to widows.

["(e) The monthly installment of annuity after adjustment under this section shall be fixed at the nearest dollar."]

#### THE ACT OF MAY 1, 1956

[AN ACT To make certain increases in the annuities of annuitants under the Foreign Service retirement and disability system.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the annuity of an annuitant under the Foreign Service retirement and disability system pursuant to the Act of May 24, 1924 (43 Stat. 140), as amended, or the Foreign Service Act of 1946 (60 Stat. 999), as amended, shall be increased the first day of the second month following enactment of this Act in accordance with the following rules:

[If the annuitant was formerly a participant in the system, the annuity to which he is entitled shall be increased \$324, provided he retired before July 1, 1949.

[SEC. 2. In the case of an officer who retired before July 1, 1949, and elected a reduced annuity at time of retirement, and who availed himself of the restoration clause in section 821(b) of the Foreign Service Act of 1946, as amended, such officer shall be entitled to receive the increase provided by the first section of this Act.

[SEC. 3. If the annuitant is receiving an annuity on the effective date of this Act as the survivor of a former participant in the system who retired before July 1, 1949, the annuity shall be increased in the amount of \$324 or in such larger amount as may be necessary to make the total annuity equal to \$1,200; except that in no event shall such annuity be increased by any amount in excess of \$324 if such increase would result in a total annuity greater than the annuity which such survivor would have been entitled to receive (as determined by the Secretary of State, taking into consideration any generally applicable pay increases but not any in-class increases or possible additional years of service) immediately prior to the effective date of this Act if such former participant had retired on November 13, 1950 (the date specified in Public Law 348, Eighty-second Congress).

[SEC. 4. If the wife of a Foreign Service officer who retired prior to July 1, 1949, becomes an annuitant subsequent to the effective date of this Act, as a result of the election made by the officer at time of retirement, such widow's annuity shall be increased in the amount of \$324.

【SEC. 5. In any case where a participant under the Foreign Service Retirement and Disability System died before August 29, 1954, leaving a widow who is not entitled to receive an annuity under the System and who is not receiving benefits as a widow under the Federal Employees' Compensation Act, the Secretary of State is authorized and directed to grant such widow an annuity of \$2,400 per annum.

【SEC. 6. In no case shall an annuity increased under this Act exceed the maximum annuity payable under section 821 (a) or (b) of the Foreign Service Act of 1946, as amended.

【SEC. 7. No annuity currently payable to any annuitant under the Foreign Service retirement and disability system shall be reduced as a result of the provisions of this Act.】

### SECTION 3 OF THE ASIAN DEVELOPMENT BANK ACT

SEC. 3. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor of the Bank, an alternate for the Governor, and a Director of the Bank.

(b) No person shall be entitled to receive any salary or other compensation from the United States for services as a Governor or Alternate Governor. The Director may, in the discretion of the President, receive such compensation, allowances, and other benefits as, together with those received by him from the Bank, will equal those authorized for [a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended] *a chief of mission under the Foreign Service Act of 1980.*

### UNITED NATIONS PARTICIPATION ACT OF 1945

SEC. 2. (a) \* \* \*

\* \* \* \* \*

(g) All persons appointed in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of rates authorized by [sections 411 and 412 of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress) for chiefs of mission] *sections 401, 402, and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsections (c) and (d) of this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Assembly shall be entitled to receive such compensation.*

\* \* \* \* \*

SEC. 8. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the United Nations as apportioned by the General Assembly in accordance with article 17 of the Charter, and for all necessary salaries and expenses

of the representatives provided for in section 2 hereof, and of their appropriate staffs, including personal services in the District of Columbia and elsewhere, without regard to the civil-service laws and the Classification Act of 1923, as amended; travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, and section 10 of the Act of March 3, 1933, as amended, and, under such rules and regulations as the Secretary of State may prescribe, travel expenses of families and transportation of effects of United States representatives and other personnel in going to and returning from their post of duty; allowances for living quarters, including heat, fuel, and light, as authorized by the Act approved June 26, 1930 (5 U.S.C. 118a); cost-of-living allowances for personnel stationed abroad under such rules and regulations as the Secretary of State may prescribe; communications services; stenographic reporting, translating, and other services, by contract; hire of passenger motor vehicles and other local transportation; rent of offices; printing and binding without regard to section 11 of the Act of March 1, 1949 (44 U.S.C. 111); allowances and expenses as provided in section 6 of the Act of July 30, 1946 (Public Law 565, Seventy-ninth Congress), and allowances and expenses equivalent to those provided in [section 901(3) of the Foreign Service Act of 1946 (Public Law 724, Seventy-ninth Congress)] *section 905 of the Foreign Service Act of 1980*; the lease or rental (for periods not exceeding ten years) of living quarters for the use of representative of the United States to the United Nations referred to in paragraph (a) of section 2 hereof, the cost of installation and use of telephones in the same manner as telephone service is provided for use of the Foreign Service pursuant to the Act of August 23, 1912, as amended (31 U.S.C. 679), and unusual expenses similar to those authorized by section 22 of the Administrative Expenses Act of 1946, as amended by section 311 of the Overseas Differentials and Allowances Act, incident to the operation and maintenance of such living quarters; and such other expenses as may be authorized by the Secretary of State; and without regard to section 3709 of the Revised Statutes as amended (41 U.S.C. 5).

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## SECTION 2 OF THE JOINT RESOLUTION OF JULY 30, 1946

JOINT RESOLUTION Providing for membership and participation by the United States in the United Nations Educational, Scientific, and Cultural Organization, and authorizing an appropriation therefor.

\* \* \* \* \*

SEC. 2. The President by and with the consent of the Senate shall designate from time to time to attend a specified session or specified sessions of the General Conference of the Organization not to exceed five representatives of the United States and such number of alternates not to exceed five as he may determine consistent with the rules of procedure of the General Conference: *Provided, however,* That each such representative and each such alternate must be an American citizen. One of the representatives shall be designated as the senior representative. Such representatives and alternates shall each be entitled to receive compensation at such rates provided for [Foreign Service officers in the schedule contained in section 412 of the Foreign Service Act of 1946, as amended,] *members of the Senior Foreign Service under section 402 of the Foreign Service Act of 1980, or pro-*

*vided for Foreign Service officers under section 403 of that Act, as the President may determine, for such periods as the President may specify, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under this section as a representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Whenever a representative of the United States is elected by the General Conference to serve on the Executive Board, or is elected President of the General Conference and thus becomes an ex officio adviser to the Executive Board, under provision of article V of the constitution of the Organization, the President may extend the above provisions for compensation to such representative during periods of service in connection with the Executive Board.*

#### SECTION 2 OF THE JOINT RESOLUTION OF JUNE 14, 1948

JOINT RESOLUTION Providing for membership and participation by the United States in the World Health Organization and authorizing an appropriation therefor.

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SEC. 2. The President shall designate from time to time to attend a specified session or specified sessions of the World Health Assembly of the Organization not to exceed three delegates of the United States and such number of alternates as he may determine consistent with the rules of procedure of the World Health Assembly. One of the delegates shall be designated as the chief delegate. Whenever the United States becomes entitled to designate a person to serve on the Executive Board of the Organization, under article 24 of the constitution of the Organization, the President shall designate a representative of the United States, by and with the advice and consent of the Senate, and may designate not to exceed one alternate to attend sessions of the Executive Board. Such representative must be a graduate of a recognized medical school and have spent not less than three years in active practice as a physician or surgeon. Such representative and any such alternate shall each be entitled to receive compensation at one of the rates [provided by section 412 of the Foreign Service Act of 1946, as amended.] *established under section 402 or 403 of the Foreign Service Act of 1980* for such period or periods as the President may specify, except that no Member of the Senate or House of Representatives or officer of the United States who is thus designated shall be entitled to receive such compensation: *Provided*, That no person shall serve as such representative, delegate, or alternate until such person has been investigated as to loyalty and security by the Civil Service Commission.

#### SECTION 203 OF THE AFRICAN DEVELOPMENT FUND ACT

SEC. 203. (a) The President, by and with the advice and consent of the Senate, shall appoint a Governor, and an Alternate Governor, of the fund.

(b) The Governor, or in his absence the Alternate Governor, on the instructions of the President, shall cast the votes of the United States for the Director to represent the United States in the Fund. The Director representing the United States and his Alternate, if they are citizens of the United States, may, in the discretion of the President, receive such compensation, allowances, and other benefits not exceeding those authorized for [a Chief of Mission, class 2, within the meaning of the Foreign Service Act of 1946, as amended] *a chief of mission under the Foreign Service Act of 1980.*

#### SECTION 408 OF THE MUTUAL SECURITY ACT OF 1954

SEC. 408. NORTH ATLANTIC TREATY ORGANIZATION.—(a) In order to provide for United States participation in the North Atlantic Treaty Organization, there is hereby authorized to be appropriated such amounts as may be necessary from time to time for the payment by the United States of its share of the expenses of the Organization and all necessary salaries and expenses of the United States permanent representative to the Organization, of such persons as may be appointed to represent the United States in the subsidiary bodies of the Organization or in any multilateral organization which participates in achieving the aims of the North Atlantic Treaty, and of their appropriate staffs, and the expenses of participation in meetings of such organizations, including salaries, expenses, and allowances of personnel and dependents as authorized by the Foreign Service Act of 1980 [1946, as amended (22 U.S.C. 801),] and allowances and expenses as provided in section 6 of the Act of July 30, 1946 (22 U.S.C. 287r).

(b) The United States permanent representative to the North Atlantic Treaty Organization shall be appointed by the President by and with the advice and consent of the Senate and shall hold office at the pleasure of the President. Such representative shall have the rank and status of ambassador extraordinary and plenipotentiary and shall be a chief of mission [class 1, within the meaning of the Foreign Service Act of 1946, as amended (22 U.S.C. 801)] *under the Foreign Service Act of 1980.*

(c) Persons detailed to the international staff of the North Atlantic Treaty Organization in accordance with [section 529 of this Act who are appointed as Foreign Service Reserve Officers may serve for periods of more than five years notwithstanding the limitation in section 522 of the Foreign Service Act of 1946, as amended (22 U.S.C. 922)] *section 628 of the Foreign Assistance Act of 1961 who are members of the Foreign Service serving under limited appointments may serve for periods of more than five years notwithstanding the limitation in section 309 of the Foreign Service Act of 1980.*



INTERNATIONAL ATOMIC ENERGY AGENCY  
PARTICIPATION ACT OF 1957

\* \* \* \* \*

SEC. 2. (a)

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(d) All persons appointed or designated in pursuance of authority contained in this section shall receive compensation at rates determined by the President upon the basis of duties to be performed but not in excess of the rates authorized by [sections 411 and 412 of the Foreign Service Act of 1946, as amended (22 U.S.C. 886, 867), for Chiefs of Mission] *sections 401, 402 and 403 of the Foreign Service Act of 1980 for chiefs of mission, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance, except that no Member of the Senate or House of Representatives or officer of the United States who is designated under subsection (b) or subsection (c) of this section as a delegate or representative of the United States or as an alternate to attend any specified session or specified sessions of the General Conference shall be entitled to receive such compensation. Any person who receives compensation pursuant to the provisions of this subsection may be granted allowances and benefits not to exceed those received [by Chiefs of Mission] under the Foreign Service Act of 1980 by chiefs of missions, members of the Senior Foreign Service, and Foreign Service officers occupying positions of equivalent importance.*

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SEC. 5. There is hereby authorized to be appropriated annually to the Department of State, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment by the United States of its share of the expenses of the International Atomic Energy Agency as apportioned by the Agency in accordance with paragraph (D) of article XIV of the Statute of the Agency, and for all necessary salaries and expenses of the representatives provided for in section 2 hereof and of their appropriate staffs, including personal services without regard to the civil service laws and the Classification Act of 1949, as amended; travel expenses without regard to the Standardized Government Travel Regulations, as amended, the Travel Expense Act of 1949, as amended, and section 10 of the Act of March 3, 1933, as amended; salaries as authorized by the Foreign Service Act of [1946, as amended] 1980; or as authorized by the Atomic Energy Act of 1954, as amended, and expenses and allowances of personnel and dependents as authorized by the Foreign Service Act of [1946, as amended;] 1980; services as authorized by section 15 of the Act of August 2, 1946 (5 U.S.C. 55a); translating and other services, by contract; hire of passenger motor vehicles and other local transportation; printing and binding without regard to section II of the Act of March 1, 1919 (44 U.S.C. 111); official functions and courtesies; such sums as may be necessary to defray the expenses of United States participation in the Preparatory Commission for the Agency, established pursuant to annex I of the Statute of the Agency; and such other expenses as may be authorized by the Secretary of State.

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#### SECTION 704 OF THE CENTER FOR CULTURAL AND TECHNICAL INTERCHANGE BETWEEN EAST AND WEST ACT OF 1960

SEC. 704. (a) In carrying out the provisions of this chapter, the Secretary may utilize his authority under the provisions of the United States Information and Educational Exchange Act of 1948, as amended.

(b) The Secretary may, in administering the provisions of this chapter, accept from public and private sources money and property to be utilized in carrying out the purposes and functions of the Center. In utilizing any gifts, bequests, or devises accepted there shall be available to the Secretary the same authorities as are available to him in accepting and utilizing gifts, bequests, and devises to the Foreign Service Institute under the provisions of the [title X, part C of the Foreign Service Act of 1946, as amended] *section 25 of the State Department Basic Authorities Act of 1956*. For the purposes of Federal income, estate, and gift taxes, any gift, devise, or bequest accepted by the Secretary under the authority of this chapter shall be deemed to be a gift, devise, or bequest to or for the use of the United States.

(c) The Secretary shall make an annual report to the Congress with respect to his activities under the provisions of this chapter, and such report shall include any recommendations for needed revisions in this chapter.

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#### SECTION 104 OF THE MUTUAL EDUCATIONAL AND CULTURAL EXCHANGE ACT OF 1961

SEC. 104. (a) The President may delegate, to such officers of the Government as he determines to be appropriate, any of the powers conferred upon him by this Act to the extent that he finds such delegation to be in the interest of the purposes expressed in this Act and the efficient administration of the programs undertaken pursuant to this Act: *Provided*, That where the President has delegated any of such powers to any officer, before the President implements any proposal for the delegation of any of such powers to another officer, that proposal shall be submitted to the Speaker of the House of Representatives and to the Committee on Foreign Relations of the Senate, and thereafter a period of not less than sixty days shall have elapsed while Congress is in session. In computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days.

(b) The President is authorized to employ such other personnel as he deems necessary to carry out the provisions and purposes of this Act, and of such personnel not to exceed ten may be compensated without regard to the provisions of the Classification Act of 1949, as amended, but not in excess of the highest rate of grade 18 of the general schedule established by such Act. Such positions shall be in addition to the number authorized by section 505 of the Classification Act of 1949, as amended.

[(c) For the purpose of performing functions under this Act outside the United States, including participation in binational or multinational foundations or commissions, the Secretary of State may employ or assign or authorize the employment or assignment for the duration of operations under this Act of persons in or to the Foreign Service Reserve or Foreign Service Staff and alien clerks and employees in accordance with applicable provisions of the Foreign Service Act of 1946, as amended (22 U.S.C. 801).]

(d) For the purpose of performing functions under this Act outside the United States, the President is authorized to provide that any person employed or assigned by a United States Government agency shall be entitled, except to the extent that the President may specify otherwise in cases in which the period of employment or assignment exceeds thirty months, to the same benefits as are provided by [section 528 of the Foreign Service Act of 1946, as amended (22 U.S.C. 928), for persons appointed to the Foreign Service Reserve and, except for policymaking officials, the provisions of section 1005 of the Foreign Service Act of 1946, as amended (22 U.S.C. 807), shall apply in the case of such persons] *section 310 of the Foreign Service Act of 1980 for individuals appointed to the Foreign Service.*

## SECTION 5 OF THE MIGRATION AND REFUGEE ASSISTANCE ACT OF 1962

SEC. 5. (a) Funds made available for the purposes of this Act shall be available for—

(1) compensation, allowances, and travel of personnel, including *members of the Foreign Service* [personnel] whose services are utilized primarily for the purpose of this Act, and without regard to the provisions of any other law, for printing and binding, and for expenditures outside the United States for the procurement of supplies and services and for other administrative and operating purposes (other than compensation of personnel) without regard to such laws and regulations governing the obligation and expenditure of Government funds as may be necessary to accomplish the purposes of this Act;

(2) employment or assignment of [Foreign Service Reserve officers] *members of the Foreign Service serving under limited appointments* for the duration of operations under this Act;

(3) exchange of funds without regard to section 3651 of the Revised Statutes (31 U.S.C. 543), and loss by exchanges;

(4) expenses authorized by the Foreign Service Act of [1946, as amended (22 U.S.C. 801 et seq.)] *1980*, not otherwise provided for;

(5) expenses authorized by the Act of August 1, 1956 (70 Stat. 890-892), as amended; and

(6) all other expenses determined by the President to be necessary to carry out the purposes of this Act.

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## SECTION 403 OF THE INTERNATIONAL DEVELOPMENT COOPERATION ACT OF 1979

### FUNCTIONS OF THE INSTITUTE

Sec. 403. (a) In carrying out its purposes, the Institute shall—

(1) assist developing countries to strengthen their own scientific and technological capacity in order for them to undertake the research and experimentation necessary for development;

(2) support research, in the United States and in developing countries, on critical development problems, with emphasis on research relating to technologies which are labor-intensive or which do not generate additional unemployment or underemployment and with emphasis on those problems which are the greatest impediment to improvement in the lives of the majority of the poor;

(3) foster the exchange of scientists and other technological experts with developing countries, and other forms of exchange and communication to promote the joint solution of problems of mutual concern to the United States and developing countries;

(4) advise and assist other agencies of the United States Government in planning and executing policies and programs of scientific and technological cooperation with developing countries;

(5) facilitate the participation of private United States institutions, businesses, and individuals in scientific and technological cooperation with developing countries; and

(6) gather, analyze, and disseminate information relevant to the scientific and technological needs of developing countries.

(b) In carrying out the functions specified in subsection (a), the Institute shall take particular care to review all of its programs, projects, and other activities to ensure that technologies which are developed, utilized, or promoted are assessed with regard to minimizing any new problems and that participants in such programs, projects, and activities are fully aware of the need for such review with respect to any technology-related activities for which they are responsible.

(c) For purposes of carrying out the functions of the Institute, the President may utilize, in addition to authorities conferred by this title, such authority contained in the Foreign Assistance Act of 1961, the [Foreign Service Act of 1946] *Foreign Service Act of 1980*, title V of the Foreign Relations Authorization Act, Fiscal Year 1979, and title IV of the International Development and Food Assistance Act of 1978, as the President deems necessary.

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### THE ACT OF AUGUST 28, 1954

AN ACT To provide for greater stability in agriculture; to augment the marketing and disposal of agricultural products; and for other purposes.

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TITLE VI—AGRICULTURAL ATTACHES

\* \* \* \* \*

Subtitle B—United States Agricultural Trade Offices

SEC. 605A. (a) \* \* \*

\* \* \* \* \*

(h) Upon the request of the Secretary of Agriculture, the Secretary of State shall request for Agricultural Trade Officers and personnel of United States Agricultural Trade Offices diplomatic privileges and immunities equivalent to those enjoyed by [Foreign Service personnel] *members of the Foreign Service* of comparable rank and salary.

\* \* \* \* \*

SEC. 606D. The Secretary of Agriculture may, under such rules and regulations as may be prescribed by the President or his designee, provide to personnel appointed or assigned by the Secretary of Agriculture under this title or other authority allowances and benefits similar to those provided by [title IX of the Foreign Service Act of 1946] *chapter 9 of title I of the Foreign Service Act of 1980*. Leaves of absence for personnel under this title shall be on the same basis as is provided for the Foreign Service of the United States by the Annual and Sick Leave Act of 1951 (5 U.S.C. 2061).

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SECTION 2002 OF TITLE 10, UNITED STATES CODE

§ 2002. Dependents of members of armed forces: language training.

(a) Notwithstanding [section 1041 of title 22] *section 701(b) of the Foreign Service Act of 1980* or any other provision of law, and under regulations to be prescribed by the Secretary of Defense or, with respect to the Coast Guard when it is not operating as a service in the Navy, the Secretary of Transportation, language training may be provided in—

- (1) a facility of the Department of Defense;
  - (2) a facility of the Foreign Service Institute established under [section 1041 of title 22] *section 701(a) of the Foreign Service Act of 1980*; or
  - (3) a civilian educational institution;
- to a dependent of a member of the armed forces in anticipation of the member's assignment to permanent duty outside the United States.
- (b) For the purposes of this section, the word "dependent" has the same meaning that it has under section 401 of title 37.

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## SECTION 8 OF THE DEFENSE DEPARTMENT OVERSEAS TEACHERS PAY AND PERSONNEL PRACTICES ACT

### COST-OF-LIVING ALLOWANCES AND POST DIFFERENTIAL

SEC. 8. (a) Under regulations which shall be prescribed by or under authority of the President, each teacher (other than a teacher employed in a substitute capacity) shall be entitled, in addition to basic compensation, to—

(1) cost-of-living allowances equal to those authorized by [section 901(2) of the Foreign Service Act of 1946 (22 U.S.C. 1131(2))] *section 5924 of title 5, United States Code*, and

(2) additional compensation equal to that authorized under section 207 of the Independent Offices Appropriation Act, 1949 (5 U.S.C. 118h).

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## INTERNAL REVENUE CODE OF 1954

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### Subtitle A—Income Taxes

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## CHAPTER 1—NORMAL TAXES AND SURTAXES

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### Subchapter B—Computation of Taxable Income

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## PART III—ITEMS SPECIFICALLY EXCLUDED FROM GROSS INCOME

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### SEC. 104. COMPENSATION FOR INJURIES OR SICKNESS.

(a) IN GENERAL.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

(2) the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness;

(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of [section 831 of the Foreign Service Act of 1946, as amended (22 U.S.C. 1081)] *section 808 of the Foreign Service Act of 1980*; and

(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States.

For purposes of paragraph (3), in the case of an individual who is, or has been, an employee within the meaning of section 401(c)(1) (relating to self-employed individuals), contributions made on behalf of such individual while he was such an employee to a trust described in section 401(a) which is exempt from tax under section 501(a), or under a plan described in section 403(a), shall, to the extent allowed as deductions under section 404, be treated as contributions by the employer which were not includible in the gross income of the employee.

\* \* \* \* \*

## PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

\* \* \* \* \*

### SEC. 170. CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS.

#### (a) ALLOWANCE OF DEDUCTION.—\* \* \*

\* \* \* \* \*

#### (i) OTHER CROSS REFERENCES.—

(1) For charitable contributions of estate and trusts, see section 642(c).

(2) For nondeductibility of contributions by common trust funds, see section 584.

(3) For charitable contributions of partners, see section 702.

(4) For charitable contributions of nonresident aliens, see section 873.

(5) For treatment of gifts for benefit of or use in connection with the Naval Academy as gifts to or for the use of the United States, see section 6973 of title 10, United States Code.

[(6) For treatment of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021(e) of that Act (22 U.S.C. 809(e)).]

(6) For treatment of gifts accepted by the Secretary of State, the Director of the International Communication Agency, or the Director of the United States International Development Cooperation Agency, as gifts to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.

\* \* \* \* \*

**Subchapter N—Tax Based on Income From Sources  
Within or Without the United States**

\* \* \* \* \*

**PART III—INCOME FROM SOURCES WITHOUT THE  
UNITED STATES**

\* \* \* \* \*

**Subpart B—Earned Income of Citizens of United States**

\* \* \* \* \*

**SEC. 912. EXEMPTION FOR CERTAIN ALLOWANCES.**

The following items shall not be included in gross income, and shall be exempt from taxation under this subtitle:

(1) **FOREIGN AREAS ALLOWANCES.**—In the case of civilian officers and employees of the Government of the United States, amounts received as allowances or otherwise (but not amounts received as post differentials) under—

[(A) title IX of the Foreign Service Act of 1946, as amended (22 U.S.C., sec. 1131 and following).]

(A) *chapter 9 of title I of the Foreign Service Act of 1980,*

\* \* \* \* \*

**Subtitle B—Estate and Gift Taxes**

\* \* \* \* \*

**CHAPTER 11—ESTATE TAX**

\* \* \* \* \*

**Subchapter A—Estates of Citizens or Residents**

\* \* \* \* \*

**PART IV—TAXABLE ESTATE**

\* \* \* \* \*

**SEC. 2055. TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS  
USES.**

(a) **IN GENERAL.**— \* \* \*

\* \* \* \* \*

(f) **CROSS REFERENCES.**—

(1) \* \* \*

\* \* \* \* \*

[(5) For treatment of gifts, devises, or bequests accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts, devises, or bequests to or for the use of the United States, see section 1021(e) of that Act (22 U.S.C. 809(e)).]

(5) *For treatment of gifts, devises, or bequests accepted by the Secretary of State, the Director of the International Communication Agency,*



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*or the Director of the United States International Development Cooperation Agency as gifts, devises, or bequests to or for the use of the United States, see section 25 of the State Department Basic Authorities Act of 1956.*

\* \* \* \* \*

## SECTION 415 OF THE DOMESTIC VOLUNTEER SERVICE ACT OF 1973

### APPLICATION OF FEDERAL LAW

#### SEC. 415. (a) \* \* \*

\* \* \* \* \*

(c) Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of title I of this Act, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of title I of this Act, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

(1) for the purposes of [section 852(a)(1) of the Foreign Service Act of 1946, as amended (22 U.S.C. 1092(a)(1)), and every other] *any* Act establishing a retirement system for civilian employees of any United States Government agency; and

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of [1946,] 1980, and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided*, That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

\* \* \* \* \*

## SECTION 405a OF TITLE 37, UNITED STATES CODE

### § 405a. Travel and transportation allowances: evacuation allowances

(a) Under regulations prescribed by the Secretaries concerned, when dependents of members of the uniformed services are ordered [evacuated] *to depart* by competent authority they may be authorized such allowances as the Secretary concerned determines necessary to offset the expenses incident to the [evacuation] *departure*. Allowances authorized by this section are in addition to those authorized by any other section of this title. For the purposes of this section, a dependent "ordered [evacuated] *to depart* by competent authority" includes—

(1) a dependent who is present at or in the vicinity of the member's duty station when the [evacuation] *departure* of dependents is ordered by competent authority and who actually moves to an authorized safe haven designated by that authority, whether such safe haven is at or in the vicinity of the member's duty station or elsewhere;

(2) a dependent who established a household at or in the vicinity of the member's duty station but who is temporarily absent therefrom of any reason when [evacuation] *departure* of dependents is ordered by competent authority; and

(3) a dependent who was authorized to join the member and who departed from his former place of residence incident to joining the member but who, as a result of the [evacuation] *departure* of dependents, is diverted to a safe haven designated by competent authority or is authorized to travel to a place the dependent may designate, even though he was in the United States when the [evacuation] *departure* was ordered.

\* \* \* \* \*

## SECTION 235 OF TITLE 38, UNITED STATES CODE

### § 235. Benefits to employees at overseas offices who are United States citizens

The Administrator may, under such rules and regulations as may be prescribed by the President or his designee, provide to personnel of the Veterans' Administration who are United States citizens and are assigned by the Administrator to the Veterans' Administration offices in the Republic of the Philippines allowances and benefits similar to those provided by the following provisions of law:

(1) Section [1131 of title 22] *905 of the Foreign Service Act of 1980* (relating to allowances to provide for the proper representation of the United States).

(2) [Section 1136 (1), (2), (3), (4), (5), (7), and (11) of title 22] *Sections 901 (1), (2), (3), (4), (7), (8), (9), (11), and (12) of the Foreign Service Act of 1980* (relating to travel expenses).

(3) Section [1138 of title 22] *901(13) of the Foreign Service Act of 1980* (relating to transportation of automobiles).

(4) Section [1148 of title 22] *903 of the Foreign Service Act of 1980* (relating to the return of personnel to the United States on leave of absence).

(5) Section [1156 of title 22] *904(d) of the Foreign Service Act of 1980* (relating to payments by the United States of expenses for treating illness or injury of officers or employees and dependents requiring hospitalization).

(6) Section 5724a(a)(3) of title 5 (relating to subsistence expenses for 30 days in connection with the return to the United States of the employee and such employee's immediate family).

(7) Section 5724a(a)(4) of title 5 (relating to the sale and purchase of the residence or settlement of an unexpired lease of

the employee when transferred from one station to another station and both stations are in the United States, its territories or possessions, or the Commonwealth of Puerto Rico). The foregoing authority supplements, but is not in lieu of, other allowances and benefits for overseas employees of the Veterans' Administration provided by titles 5 and 22.

# TITLE 5, UNITED STATES CODE

## PART III—EMPLOYEES

### Subpart B—Employment and Retention

#### CHAPTER 33—EXAMINATION, SELECTION, AND PLACEMENT

##### SUBCHAPTER I—EXAMINATION, CERTIFICATION, AND APPOINTMENT

###### § 3323. Automatic separations; reappointment; reemployment of annuitants

(a) An individual who reaches the retirement age prescribed for automatic separation applicable to him may not be continued in the civil service or in the government of the District of Columbia. An individual separated on account of age under a statute or regulation providing for retirement on account of age is not eligible for appointment in the civil service or in the government of the District of Columbia. The President, when in his judgment the public interest so requires, may except an individual from this subsection by Executive order. This subsection does not apply to an individual named by a statute providing for the continuance of the individual in the civil service or in the government of the District of Columbia.

(b) Notwithstanding other statutes, an annuitant as defined by section 8331 of this title receiving annuity from the Civil Service Retirement and Disability Fund is not barred by reason of his retired status from employment in an appointive position for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

(c) Notwithstanding subsection (a) of this section, a [Foreign Service officer retired under section 1001 or 1002 of title 22 or a Foreign Service staff officer or employee retired under section 1063 of title 22] *member of the Foreign Service retired under section 812 of the Foreign Service Act of 1980* is not barred by reason of his re-

tired status from employment in a position in the civil service for which he is qualified. An annuitant so reemployed serves at the will of the appointing authority.

\* \* \* \* \*

## **CHAPTER 35—RETENTION PREFERENCE, RESTORATION, AND REEMPLOYMENT**

### **SUBCHAPTER I—RETENTION PREFERENCE**

SEC.

- 3501. Definitions ; application.
- 3502. Order of retention.
- 3503. Transfer of functions.
- 3504. Preference eligible ; retention ; physical qualifications ; waiver.

### **SUBCHAPTER II—RESTORATION AFTER ACTIVE DUTY OR TRAINING DUTY**

- 3551. Restoration ; Reserves and National Guardsmen.

### **SUBCHAPTER III—REINSTATEMENT OR RESTORATION AFTER SUSPENSION OR REMOVAL FOR NATIONAL SECURITY**

- 3571. Reinstatement or restoration ; individual suspended or removed for national security.

### **SUBCHAPTER IV—REEMPLOYMENT AFTER SERVICE WITH AN INTER- NATIONAL ORGANIZATION**

- 3581. Definitions.
- 3582. Rights of transferring employees.
- 3583. Computations.
- 3584. Regulations.

### **SUBCHAPTER V—REMOVAL, REINSTATEMENT, AND GUARANTEED PLACEMENT IN THE SENIOR EXECUTIVE SERVICE**

- 3591. Definitions.
- 3592. Removal from the Senior Executive Service.
- 3593. Reinstatement in the Senior Executive Service.
- 3594. Guaranteed placement in other personnel systems.
- 3595. Regulations.

### **SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIMITED APPOINT- MENT IN THE FOREIGN SERVICE**

- 3597. Reemployment following limited appointment in the Foreign Service.

\* \* \* \* \*

### **SUBCHAPTER VI—REEMPLOYMENT FOLLOWING LIM- ITED APPOINTMENT IN THE FOREIGN SERVICE**

#### **§ 3597. Reemployment following limited appointment in the For- eign Service**

*An employee of any agency who accepts, with the consent of the head of that agency, a limited appointment in the Foreign Service under section 309 of the Foreign Service Act of 1980 is entitled, upon the expiration of that appointment, to be reemployed in that employee's former position or in a corresponding or higher position in that agency. Upon reemployment under this section, an employee shall be entitled to any within-grade increases in pay which the employee would have received if the employee had remained in the former position in the agency.*

\* \* \* \* \*

## Subpart D—Pay and Allowances

### CHAPTER 51—CLASSIFICATION

\* \* \* \* \*

§ 5102. Definitions; application

(a) \* \* \*

\* \* \* \* \*

(c) This chapter does not apply to—

(1) Repealed. Pub. L. 91-375, § 6(c) (9), Aug. 12, 1970, 84 Stat. 776;

(2) **Employees in the Foreign Service of the United States whose pay is fixed under chapter 14 of title 22** *members of the Foreign Service whose pay is fixed under the Foreign Service Act of 1980*; and positions in or under the Department of State which are—

(A) connected with the representation of the United States to international organizations; or

(B) specifically exempted by statute from this chapter or other classification or pay statute;

\* \* \* \* \*

### CHAPTER 53—PAY RATES AND SYSTEMS

\* \* \* \* \*

#### SUBCHAPTER I—PAY COMPARABILITY SYSTEM

§ 5301. Policy

(a) \* \* \*

\* \* \* \* \*

(c) For the purpose of this subchapter, “statutory pay system” means a pay system under—

(1) subchapter III of this chapter, relating to the General Schedule; *or*

**[(2) subchapter IV of chapter 14 of title 22, relating to the Foreign Service of the United States; or]**

**[(3)] (2) chapter 73 of title 38, relating to the Department of Medicine and Surgery, Veterans’ Administration.**

\* \* \* \* \*

§ 5303. Higher minimum rates; Presidential authority

(a) When the President finds that the pay rates in private enterprise for one or more occupations in one or more areas or locations are so substantially above the pay rates of statutory pay schedules as to handicap significantly the Government’s recruitment or retention of well-qualified individuals in positions paid under—

(1) section 5332 of this title; *or*

**[(3)] (2) the pay scales for physicians, dentists, and nurses in the Department of Medicine and Surgery, Veterans’ Administration, under chapter 73 of title 38 [; or].**

**[(4) sections 867 and 870 of title 22;]**

he may establish for the areas or locations higher minimum rates of basic pay for one or more grades or levels, occupational groups, series, classes, or subdivisions thereof, and may make corresponding increases in all step rates of the pay range for each such grade or level. However, a minimum rate so established may not exceed the maximum pay rate prescribed by statute for the grade or level. The President may authorize the exercise of the authority conferred on him by this section by the Office of Personnel Management or, in the case of individuals not subject to the provisions of this title governing appointment in the competitive service, by such other agency as he may designate.

\* \* \* \* \*

#### **§ 5304. Presidential policies and regulations**

The functions, duties, and regulations of the agencies and the Office of Personnel Management with respect to this subchapter, subchapter III of this chapter, chapter 51 of this title, [chapter 14 of title 22] *the Foreign Service Act of 1980*, and the provisions of chapter 73 of title 38 relating to employees in the Department of Medicine and Surgery, Veterans' Administration, are subject to such policies and regulations as the President may prescribe. Among other things, the policies and regulations of the President may provide for—

- (1) preparing and reporting to him the annual comparison of Federal pay rates with private enterprise rates;
- (2) obtaining and reporting to him the views of employee organizations on the annual comparison, and on other pay matters;
- (3) reviewing and reporting to him on the adequacy of the Federal statutory pay structures for the Federal programs to which they apply;
- (4) reviewing the relationship of Federal statutory pay rates and private enterprise pay rates in specific occupation and local areas; and
- (5) providing step-increases in recognition of high quality performance and providing for properly relating supervisory pay rates paid under one system to those of subordinates paid under another system.

\* \* \* \* \*

### **SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES**

\* \* \* \* \*

#### **§ 5313. Positions at level II**

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

- Deputy Secretary of Defense.
- Deputy Secretary of State.
- Administrator, Agency for International Development.
- Administrator of the National Aeronautics and Space Administration.
- Administrator of Veterans' Affairs.
- Deputy Secretary of the Treasury.
- Deputy Secretary of Transportation.

Chairman, Nuclear Regulatory Commission.  
Chairman, Council of Economic Advisers.  
Chairman, Board of Governors of the Federal Reserve System.  
Director of the Bureau of the Budget.  
Director of the Office of Science and Technology.  
Director of the United States Arms Control and Disarmament Agency.  
Director of the United States Information Agency.  
Director of Central Intelligence.  
Secretary of the Air Force.  
Secretary of the Army.  
Secretary of the Navy.  
Administrator, Federal Aviation Administration.  
Director of the National Science Foundation.  
Deputy Attorney General.  
Director of the Special Action Office for Drug Abuse Prevention.  
Deputy Secretary of Energy.  
Deputy Secretary of Agriculture.  
Director of the Office of Personnel Management.  
*Ambassadors at Large.*

\* \* \* \* \*

## CHAPTER 55—PAY ADMINISTRATION

\* \* \* \* \*

### SUBCHAPTER III—ADVANCEMENT ALLOCATION, AND ASSIGNMENT OF PAY

\* \* \* \* \*

#### § 5522. Advance payments; rates; amounts recoverable

(a) The head of each agency may provide for the advance payment of the pay, allowances, and differentials, or any of them, covering a period of not more than 30 days, to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency) whose [evacuation] *departure* (or that of his dependents or immediate family, as the case may be) from a place inside or outside the United States [is ordered for military or other reasons which create imminent danger to the life or lives of the employee or of his dependents or immediate family.] *is officially authorized or ordered—*

(1) *from a place outside the United States from which the Secretary of State determines it is in the national interest to require the departure of some or all employees, their dependents, or both; or*

(2) *from any place where there is imminent danger to the life of the employee or the lives of the dependents or immediate family of the employee.*

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, the advance payment of pay, allowances, and differentials is at rates currently authorized with respect to the employee on the date the advance pay-

ment is made under agency procedures governing advance payments under this subsection. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the [evacuation] *departure* order.

\* \* \* \* \*

**§ 5523. Duration of payments; rates; active service period**

(a) The head of each agency may provide for—

(1) the payment of monetary amounts covering a period of not more than 60 days to or for the account of each employee of the agency (or, under emergency circumstances and on a reimbursable basis, an employee of another agency)—

[(A) whose evacuation from a place inside or outside the United States is ordered for military or other reasons which create imminent danger to the life of the employee; and]

(A) *whose departure is authorized or ordered under section 5522(a) of this title; and*

(B) who is prevented, by circumstances beyond his control and beyond the control of the Government of the United States or the government of the District of Columbia, or both, as the case may be, from performing the duties of the position which he held immediately before issuance of the [evacuation] *departure* order; and

(2) the termination of payment of the monetary amounts.

The President, with respect to the Executive agencies, may extend the 60-day period for not more than 120 additional days if he determines that the extension of the period is in the interest of the United States.

(b) Subject to adjustment of the account of an employee under section 5524 of this title and other applicable statute, each payment under this section is at rates of pay, allowances, and differentials, or any of them, currently authorized with respect to the employee on the date payment is made under agency procedures governing payments under this section. The rates so authorized may not exceed the rates to which the employee was entitled immediately before issuance of the [evacuation] *departure* order. An employee in an Executive agency may be granted such additional allowance payments as the President determines necessary to offset the direct added expenses incident to the [evacuation] *departure*.

\* \* \* \* \*

**SUBCHAPTER V—PREMIUM PAY**

**§ 5541. Definitions**

For the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) a military department;
- (C) an agency in the judicial branch;
- (D) the Library of Congress;
- (E) the Botanic Garden;
- (F) the Office of the Architect of the Capitol; and
- (G) the government of the District of Columbia; and



(2) "employee" means—

(A) an employee in or under an Executive agency;

(B) an individual employed by the government of the District of Columbia; and

(C) an employee in or under the judicial branch, the Library of Congress, the Botanic Garden, and the Office of the Architect of the Capitol, who occupies a position subject to chapter 51 and subchapter III of chapter 53 of this title;

but does not include—

(i) a justice or judge of the United States;

(ii) the head of an agency other than the government of the District of Columbia;

(iii) a teacher, school official, or employee of the Board of Education of the District of Columbia, whose pay is fixed under chapter 15 of title 31, District of Columbia Code;

(iv) a member of the Metropolitan Police, the Fire Department of the District of Columbia, the United States Park Police, or the Executive Protection Service;

(v) a student-employee as defined by section 5351 of this title;

(vi) Repealed. Pub. L. 91-375, § 6(c) (16), Aug. 12, 1970, 84 Stat. 776;

(vii) an employee outside the continental United States or in Alaska who is paid in accordance with local native prevailing wage rates for the area in which employed;

(viii) an employee of the Tennessee Valley Authority;

(ix) an individual to whom section 1291(a) of title 50, appendix, applies;

(x) an employee of a Federal land bank, Federal intermediate credit bank, or a bank for cooperatives;

(xi) an employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under subchapter IV of chapter 53 of this title, or by a wage board or similar administrative authority serving the same purpose, except as provided by section 5544 of this title;

(xii) an employee of the Transportation Corps of the Army on a vessel operated by the United States, a vessel employee of the Environmental Science Services Administration, a vessel employee of the Department of the Interior, or a vessel employee of the Panama Canal Commission;

(xiii) a "teacher" or an individual holding a "teaching position" as defined by section 901 of title 20;

(xiv) a "Foreign Service officer" within the meaning of section 401 of the Foreign Service Act of 1946;

(xv) a "Foreign Service information officer" as provided for by the first section of the Act entitled "An Act to promote the foreign policy of the United States by strengthening and improving the Foreign Service personnel system of the International Communication Agency through establishment of a Foreign Service Information Officer Corps", approved August 20, 1968;

(xiv) a member of the Senior Foreign Service; or  
(b) Nothing in this Act shall be construed as precluding compensatory time for Foreign Service officers.

#### SUBCHAPTER IX—SEVERANCE PAY AND BACK PAY

\* \* \* \* \*

##### § 5596. Back pay due to unjustified personnel action

(a) \* \* \*

(b) (1) An employee of an agency who, on the basis of a timely appeal or an administrative determination (including a decision relating to an unfair labor practice or a grievance) is found by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have been affected by an unjustified or unwarranted personnel action which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee—

(A) is entitled, on correction of the personnel action, to receive for the period for which the personnel action was in effect—

(i) an amount equal to all or part of the pay, allowances, or differentials, as applicable which the employee normally would have earned or received during the period if the personnel action had not occurred, less any amounts earned by the employee through other employment during that period; and

(ii) reasonable attorney fees related to the personnel action which, with respect to any decision relating to an unfair labor practice or a grievance processed under a procedure negotiated in accordance with chapter 71 of this title, or under chapter 11 of title I of the Foreign Service Act of 1980, shall be awarded in accordance with standards established under section 7701(g) of this title; and

(B) for all purposes, is deemed to have performed service for the agency during that period, except that—

(i) annual leave restored under this paragraph which is in excess of the maximum leave accumulation permitted by law shall be credited to a separate leave account for the employee and shall be available for use by the employee within the time limits prescribed by regulations of the Office of Personnel Management, and

(ii) annual leave credited under clause (i) of this subparagraph but unused and still available to the employee under regulations prescribed by the Office shall be included in the lump-sum payment under section 5551 or 5552(1) of this title but may not be retained to the credit of the employee under section 5552(2) of this title.

(2) This subsection does not apply to any reclassification action nor authorize the setting aside of an otherwise proper promotion by a selecting official from a group of properly ranked and certified candidates.

(3) For the purpose of this subsection, "grievance" and "collective bargaining agreement" have the meanings set forth in section 7103 of

this title *and (with respect to members of the Foreign Service) in sections 1101 and 1002 of the Foreign Service Act of 1980*, "unfair labor practice" means an unfair labor practice described in section 7116 of this title *and (with respect to members of the Foreign Service) in section 1015 of the Foreign Service Act of 1980*, and "personnel action" includes the omission or failure to take an action or confer a benefit.

\* \* \* \* \*

## CHAPTER 57—TRAVEL, TRANSPORTATION, AND SUBSISTENCE

\* \* \* \* \*

### SUBCHAPTER II—TRAVEL AND TRANSPORTATION EX- PENSES; NEW APPOINTEES, STUDENT TRAINEES, AND TRANSFERRED EMPLOYEES

\* \* \* \* \*

#### § 5724. Travel and transportation expenses of employees trans- ferred; advancement of funds; reimbursement on com- muted basis

(a) \* \* \*

(g) The allowances authorized by this section do not apply to an employee transferred under [chapter 14 of title 22] *the Foreign Service Act of 1980*.

#### § 5727. Transportation of motor vehicles

(a) \* \* \*

(e) (1) This section, except subsection (a), does not apply to—  
(A) the Foreign Service of the United States; or  
(B) the Central Intelligence Agency.

[(2) This section, except subsection (a), does not affect—  
[(A) section 1138 of title 22; or  
[(B) section 403e(4) of title 50.]

(2) *This section, except subsection (a), does not affect section 403e(4) of title 50.*

## CHAPTER 59—ALLOWANCES

### SUBCHAPTER I—UNIFORMS

- Sec.  
5901. Uniform allowances.  
5902. Increase in maximum uniform allowance.  
5903. Regulations.

### SUBCHAPTER II—QUARTERS

5911. Quarters and facilities; employees in the United States.  
5912. Quarters in Government owned or rented buildings; employees in foreign countries.  
5913. Official residence expenses.

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

- 5921. Definitions.
- 5922. General provisions.
- 5923. Quarters allowances.
- 5924. Cost-of-living allowances.
- 5925. Post differentials.
- 5926. Compensatory time off at certain posts in foreign areas.
- 5927. *Advances of pay.*
- 5928. *Danger pay allowance.*

SUBCHAPTER III—OVERSEAS DIFFERENTIALS AND ALLOWANCES

§ 5924. Cost-of-living allowances

The following cost-of-living allowances may be granted, when applicable, to an employee in a foreign area :

(1) \* \* \*

(3) A separate maintenance allowance to assist an employee who is compelled *or authorized*, because of dangerous, notably unhealthful, or excessively adverse living conditions at the employee's post of assignment in a foreign area, or for the convenience of the Government, *or who requests such an allowance because of special needs or hardship involving the employee or the employee's spouse or dependents*, to meet the additional expenses of maintaining, elsewhere than at the post, the employee's spouse or dependents, or both.

(4) An education allowance or payment of travel costs to assist an employee with the extraordinary and necessary expenses, not otherwise compensated for, incurred because of his service in a foreign area or foreign areas in providing adequate education for his dependents, as follows :

(A) An allowance not to exceed the cost of obtaining such kindergarten, elementary and secondary educational services as are ordinarily provided without charge by the public schools in the United States, plus, in those cases when adequate schools are not available at the post of the employee, board and room, and periodic transportation between that post and the nearest locality where adequate schools are available, without regard to section 529 of title 31. The amount of the allowance granted shall be determined on the basis of the educational facility used.

(B) The travel expenses of dependents of an employee to and from a school in the United States to obtain an American secondary or undergraduate college education, not to exceed [(i)] in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee [of the Department of State, of the International Communication

Agency, the Department of Justice, the Central Intelligence Agency, or the National Security Agency, or of the Agency for International Development, or (ii) one trip each way for each dependent of any other employee for the purpose of obtaining each type of education].<sup>8</sup> An allowance payment under subparagraph (A) of this paragraph (4) may not be made for a dependent during the 12 months following his arrival in the United States for secondary education under authority contained in this subparagraph (B). Notwithstanding section 5921 (6) of this title, travel expenses, for the purpose of obtaining undergraduate college education, may be authorized under this subparagraph (B), under such regulations as the President may prescribe, for dependents of employees who are citizens of the United States stationed in the Canal Zone.

#### **§ 5925. Post differentials**

(a) A post differential may be granted on the basis of conditions of environment which differ substantially from conditions of environment in the continental United States and warrant additional pay as a recruitment and retention incentive. A post differential may be granted to an employee officially stationed in the United States who is on extended detail in a foreign area. A post differential *under this subsection* may not exceed 25 percent of the rate of basic pay.

(b) *Any employee granted a differential under subsection (a) of this section may be granted an additional differential for an assignment to a post determined to have especially adverse conditions of environment which warrant additional pay as a recruitment and retention incentive for the filling of positions at that post. An additional differential for any employee under this subsection—*

(1) *may be paid for each assignment to a post determined to have such conditions;*

(2) *may be paid periodically or in a lump sum; and*

(3) *may not exceed 15 percent of the rate of basic pay of that employee for the period served under that assignment.*

\* \* \* \* \*

#### **§ 5927. Advances of pay**

*Up to three months' pay may be paid in advance to an employee upon the assignment of the employee to a post in a foreign area.*

#### **§ 5928. Danger pay allowance**

*An employee serving in a foreign area may be granted a danger pay allowance on the basis of civil insurrection, civil war, terrorism, or*

<sup>8</sup> Section 510 of Public Law 96-53 struck out "one annual trip each way for each dependent of an employee of the Department of State or the United States Information Agency, or" and inserted in lieu thereof "(1) in the case of dependents traveling to obtain secondary education, one annual trip, or in the case of dependents traveling to obtain undergraduate college education, two annual trips, each way for each dependent of an employee of the Department of State, of the International Communication Agency, or of the Agency for International Development, or (ii)". Section 502 of Public Law 96-100 struck out "or the United States Information Agency," and inserted in lieu thereof the following: "the International Communication Agency, the Central Intelligence Agency, or the National Security Agency,". Section 4(h) of Public Law 96-132 inserted "the Department of Justice," after "the International Communication Agency,".

*wartime conditions which threaten physical harm or imminent danger to the health or well-being of the employee. A danger pay allowance may not exceed twenty-five percent of the basic pay of the employee.*

\* \* \* \* \*

## CHAPTER 63—LEAVE

\* \* \* \* \*

### SUBCHAPTER I—ANNUAL AND SICK LEAVE

#### § 6301. Definitions

For the purpose of this subchapter—

(1) “United States”, when used in a geographical sense, means the several States and the District of Columbia; and

(2) “employee” means—

(A) an employee as defined by section 2105 of this title; and

(B) an individual employed by the government of the District of Columbia;

but does not include—

(i) a teacher or librarian of the public schools of the District of Columbia;

(ii) a part-time employee who does not have an established regular tour of duty during the administrative work-week;

(iii) a temporary employee engaged in construction work at an hourly rate;

(iv) an employee of the Panama Canal Commission when employed on the Isthmus of Panama;

(v) a physician, dentist, or nurse in the Department of Medicine and Surgery, Veterans' Administration;

(vi) an employee of either House of Congress or of the two Houses;

(vii) an employee of a corporation supervised by the Farm Credit Administration if private interests elect or appoint a member of the board of directors;

(viii) an alien employee who occupies a position outside the United States, except as provided by section 6310 of this title;

(ix) a “teacher” or an individual holding a “teaching position” as defined by section 901 of title 20;

(x) an officer in the executive branch or in the government of the District of Columbia who is appointed by the President and whose rate of basic pay exceeds the highest rate payable under section 5332 of this title;

(xi) an officer in the executive branch or in the government of the District of Columbia who is designated by the President, except a postmaster, United States attorney, or United States marshal;

(xii) [an officer who receives pay under section 866 of title 22] *a chief of missions (as defined in section 102(a)(3) of the Foreign Service Act of 1980); or*

(xiii) an officer in the legislative or judicial branch who is appointed by the President.

*Notwithstanding clauses (x)-(xii) of paragraph (2), the term "employee" includes any member of the Senior Foreign Service or any Foreign Service officer (other than a member or officer serving as chief of mission or in a position in the Department of State which requires appointment by and with the advice and consent of the Senate) and any member of the Foreign Service commissioned as a diplomatic or consular officer, or both, under section 312 of the Foreign Service Act of 1980.*

\* \* \* \* \*

**§ 6304. Annual leave; accumulation**

(a) Except as provided by subsections (b), (d), (e), [and (f)] (f), and (g) of this section, annual leave provided by section 6303 of this title, which is not used by an employee, accumulates for use in succeeding years, until it totals not more than 30 days at the beginning of the first full biweekly pay period, or corresponding period for an employee who is not paid on the basis of biweekly pay periods, occurring in a year.

\* \* \* \* \*

(g) *Annual leave accrued by a member of the Senior Foreign Service shall not be subject to the limitation on accumulation otherwise imposed by this section.*

**§ 6305. Home leave; leave for Chiefs of Missions; leave for crews of vessels**

(a) After 24 months of continuous service outside the United States, an employee may be granted leave of absence, under regulations of the President, at a rate not to exceed 1 week for each 4 months of that service without regard to other leave provided by this subchapter. Leave so granted—

(1) is for use in the United States, or if the employee's place of residence is outside the area of employment, in its territories or possessions including the Commonwealth of Puerto Rico;

(2) accumulates for future use without regard to the limitation in section 6304(b) of this title; and

(3) may not be made the basis for terminal leave or for a lump-sum payment.

(b) The President may authorize leave of absence to [an officer] a chief of mission excepted from this subchapter by section 6301(2) (xii) of this title for use in the United States and its territories or possessions. Leave so authorized does not constitute a leave system and may not be made the basis for a lump-sum payment.

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**Subpart F—Labor-Management and Employee Relations**

**CHAPTER 71—LABOR-MANAGEMENT RELATIONS**

\* \* \* \* \*

## SUBCHAPTER I—GENERAL PROVISIONS

### § 7103. Definitions; application

(a) For the purpose of this chapter—

(1) “person” means an individual, labor organization, or agency;

(2) “employee” means an individual—

(A) employed in an agency; or

(B) whose employment in an agency has ceased because of any unfair labor practice under section 7116 of this title and who has not obtained any other regular and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but does not include—

(i) an alien or noncitizen of the United States who occupies a position outside the United States;

(ii) a member of the uniformed services;

(iii) a supervisor or a management official;

(iv) an officer or employee in the Foreign Service of the United States employed in the Department of State, [the Agency for International Development, or] the International Communication Agency, the *United States International Development Cooperation Agency*, the *Department of Agriculture*, or the *Department of Commerce*; or

(v) any person who participates in a strike in violation of section 7311 of this title;

## CHAPTER 83—RETIREMENT

### SUBCHAPTER III—CIVIL SERVICE RETIREMENT

#### § 8332. Creditable service

(a) The total service of an employee or Member is the full years and twelfth parts thereof, excluding from the aggregate the fractional part of a month, if any.

(b) The service of an employee shall be credited from the date of original employment to the date of separation on which title to annuity is based in the civilian service of the Government. Credit may not be allowed for a period of separation from the service in excess of 3 calendar days. The service includes—

(1) employment as a substitute in the postal field service;

(2) service in the Pan American Sanitary Bureau;

(3) subject to sections 8334(c) and 8339(i) of this title, service performed before July 10, 1960, as an employee of a county committee established under section 590h(b) of title 16 or of a committee or an association of producers described by section 610(b) of title 7;



(4) service as a student-employee as defined by section 5351 of this title only if he later becomes subject to this subchapter;

(5) a period of satisfactory service of a volunteer or volunteer leader under chapter 34 of title 22 only if he later becomes subject to this subchapter;

(6) employment under section 709 of title 32 or any prior corresponding provision of law;

(7) a period of service of a volunteer under part A of title VIII of the Economic Opportunity Act of 1964, or a period of service of a full-time volunteer enrolled in a program of at least one year's duration under part A, B or C of title I of the Domestic Volunteer Service Act of 1973 only if he later becomes subject to this subchapter;

(8) subject to sections 8334(c) and 8339(i) of this title, service performed on or after February 18, 1929, and before noon on January 3, 1971, as a United States Capitol Guide; [and]

(9) subject to sections 8334(c) and 8339(i) of this title, service as a substitute teacher for the government of the District of Columbia after July 1, 1955, if such service is not credited for benefits under any other retirement system established by a law of the United States[.] ; and

(10) *periods of imprisonment of a foreign national for which compensation is provided under section 410 of the Foreign Service Act of 1980, if the individual (A) was subject to this subchapter during employment with the Government last preceding imprisonment, or (B) is qualified for an annuity under this subchapter on the basis of other service of the individual.*

(11) *Subject to sections 8334(c) and 8339(i) of this title, service in any capacity of at least 130 working days per year performed after July 1, 1946 for the National Committee for a Free Europe; Free Europe Committee, Inc.; Free Europe, Inc.; Radio Liberation Committee; Radio Liberty Committee; or their subdivisions; Radio Free Europe/Radio Liberty, Inc.; Radio Free Asia; the Asia Foundation; or the American Forces Network, Europe (AFN-E).*

*The Office of Personnel Management shall accept the certification of the Executive Director of the Board for International Broadcasting concerning services for the purposes of this subchapter of the type performed by an employee named by paragraph (11) of this subsection.*

## CHAPTER 85—UNEMPLOYMENT COMPENSATION

### SUBCHAPTER I—EMPLOYEES GENERALLY

#### § 8501. Definitions

For the purpose of this subchapter—

(1) "Federal service" means service performed after 1952 in the employ of the United States or an instrumentality of the United States which is wholly or partially owned by the United States, but does not include service (except service to which subchapter II of this chapter applies) performed—

(A) by an elective official in the executive or legislative branch;

(B) as a member of the armed forces;

(C) by **Foreign Service personnel for whom special separation allowances are provided under chapter 14 of title 22** *members of the Foreign Service for whom payments are provided under section 609(b)(1) of the Foreign Service Act of 1980;*

\* \* \* \* \*

### ADDITIONAL VIEWS OF SENATOR JESSE HELMS OF NORTH CAROLINA

The proposed legislation which has been agreed to by the majority of the Committee fails to resolve the more serious weaknesses of the present Foreign Service. Indeed, several provisions will make the Foreign Service even less efficient in some respects, and will deepen the crisis of morale which is presently endemic in the Service.

The Foreign Service of the United States and the diplomatic establishment which it is intended to serve have been in a state of crisis and decline for at least a decade, perhaps a generation. Their decline has accompanied, and contributed to, the decline of the United States as a world power. Thus the solution of the fundamental diplomatic functions of the Foreign Service should be seen in terms of the fundamental foreign policy goals of the United States.

Neither the Committee bill, nor the administration bill, H.R. 6790, addresses the problems of the Foreign Service in terms of these larger issues. It does not recognize that the crisis in the Foreign Service does not arise mainly from such administrative issues as the number of classes of foreign service officers, the categories of its personnel, or even the promotion and selection out procedures it employs. It arises instead from confusions as to the proper role of the traditional Foreign Service in foreign policy; its status among the Federal departments and agencies, including the Central Intelligence Agency; its specific functional role within the Department of State with its separate civil career and excepted service personnel; and its ability to recruit quotas of women and minority personnel without a reduction in the professional quality of its members.

These fundamental problems are not solved but exacerbated by the Committee bill, which is at best an effort to reconcile special interests rather than the creation of the best professional diplomatic and consular service which the United States could provide. At a time when there is an increasing use of private citizens and personnel from the White House and other departments to perform diplomatic missions of the most delicate nature, the Congress should not permit public attention to be deflected from the serious problems which the Foreign Service faces.

Foreign Service reform should recognize that the Corps is essentially an elite service, that differs fundamentally from the civil service. Although many of the cosmic problems relating to foreign policy must await a major reorganization of the foreign affairs agencies, including even certain functions of the Departments of Agriculture, Commerce, Treasury, and the military departments, Congress should focus on the immediate issues that trouble the Foreign Service today.

These issues are: selection and recruitment standards; classification and recruitment standards; classification of positions; pay and retire-

ment benefits; labor-management relations; and supplemental compensation for the burdens and dangers with which foreign service personnel must contend.

The basic philosophy behind legislation specifically distinguishing the foreign service from the civil service should relate to the additional rigorous duties, greater sacrifices, more dedication to hazardous and onerous service. Consequently, Congress should begin with the policy that foreign service personnel must have all the rights and prerequisites of civil service personnel plus such additional safeguards and rewards and protections which take cognizance of the greater demands on professional qualification and personal character and dedication.

The Committee bill addresses the problems of the Foreign Service from the standpoint of improving administration of the Department, without regard to the function of the Foreign Service. Proper reform should heighten the character of the Foreign Service as an elite institution, while at the same time demanding a higher calibre of performance. It should recognize the increased hazard of service abroad, as well as the increased inconveniences and liabilities which accrue to family and professional life in times of uncertainty and rapid shifts in the international economic order. Finally, it should provide for a humane and sensible system for the elimination of redundant personnel, so that the taxpayers' money is not wasted.

In my opinion, the Committee bill has failed to do this. It has not even taken note of such risks as the risk of being taken hostage—a situation all too familiar to us today.

On July 29, 1980, I introduced S. 2986, which has only 11 pages of text in contrast to the Committee bill, which has over 250 pages. It covers the essential points in simple and understandable form. These 11 pages achieve more directly the essential urgent reforms which are now long overdue.

On August 15, 1980, I received a letter from Mr. Bernard Weisman, President, of the Foreign Affairs Employees Council of the American Federation of Government Employees, AFL-CIO. This labor organization serves employees of the Department of State, the International Communication Agency, the Agency for International Development, the Arms Control and Disarmament Agency, and the Overseas Private Investment Corporation.

Mr. Weisman wrote:

At a meeting of the Foreign Affairs Employees Council last night, officers discussed pending legislation affecting the foreign affairs community.

We find that S. 2986, which you introduced, offers a most interesting and constructive approach to the development of a capable career service.

If your bill goes forward, we hope you will be willing to accept S. 2150 provisions for FS Retirement coverage for certain former employees of Binational Centers and of CIA covertly funded radio services which we have long sought. We also urge inclusion of S. 2712 provisions for the FS Grievance system which are highly preferable to those aspects of either Senate or House Committee texts.

We appreciate the thoughtful initiative you have taken in proposing an alternative to the Department's omnibus package.

I recommend that the Senate enact my bill, S. 2986, with the amendment thereto which I am indicating in this report, as a substitute for the Committee bill.

During the consideration of the staff draft, which is now the Committee bill, the State Department submitted a criticism of my bill, a criticism in which its provisions were both misread and misrepresented. The issues raised by the State Department, however, provide an opportunity to discuss in detail and in a practical manner the specific problems which must be considered in Foreign Service reform. To simplify my presentation of arguments in support of my recommendation, I shall incorporate fully the criticisms of the Department of State and my rebuttals. Thus, the purposes of S. 2986 will be clearly understood. Excerpts from my statement on introducing S. 2986 will follow, as well as the text of the bill.

As addenda to my bill, I am willing to accept the provisions of three amendments introduced by my distinguished colleague, Senator Pell, during the mark-up sessions. These relate to: (1) retirement credits for Binational Center Employees; (2) retirement credit for services with government-funded radios; and (3) selection of a grievant representative acceptable to the complainant.

I shall now proceed to a discussion of my own bill and the criticisms leveled against it by the Department of State.

The full text of the Department's criticisms and my interpolated comments follow.

Department of State analysis:

HELMS SUBSTITUTE FOR STAFF DRAFT OF FOREIGN SERVICE BILL  
(H.R. 6790)

The following analysis is divided into 4 parts, following the main features of the Helms substitute.

*1. Pay Comparability*

The same FS/GS linkages are established by the Helms Amendment as are established by the bill for a Foreign Service Act. Both establish Option I. It is agreed by OPM, OMB, the President and all three foreign affairs agencies that Foreign Service Officers at certain levels are significantly underpaid in comparison to civil servants with equivalent duties and responsibilities, and therefore that some comparability is necessary.

The Helms amendment would not save any money, and will cost more in salaries than H.R. 6790. For State alone, the feature of a 15 percent of base pay bonus would cost more than \$34 million annually.

*Comment.*—In an earlier communication, the State Department estimated that the Option 1 linkage would cost \$34 million. This is the "linkage" to which the Department now refers, implying incorrectly that the "linkage" system in my bill and the one in H.R. 6790 (or the

Committee bill) would produce the same result. In contrast, the Department argues, its own preferred Option II would cost only \$15.2 million annually.

The Department also asserts that the 15 percent differential in my bill would cost a further \$34 million. Thus, according to its own reading, the total additional salary costs of my bill over current expenditures would be \$68 million.

Whatever merits there may be to the Department's comments on H.R. 6790, its observations regarding my bill are incorrect. My linkage proposal would not cost one cent more in base salary costs.

Unlike the Committee bill, H.R. 6790 and the Department's own proposals, my bill precludes any increase in costs due solely to "linkage." Instead, the Secretary of State is explicitly required to assign personnel to positions classified according to levels of difficulty of work as determined by standards published by the Office of Personnel Management. Consequently, under my bill no person should be paid one cent more by reason of "rank-in-person" status than is justified under proper "rank-in-job" position classification. Equally obviously, no person would, or should, be paid less.

The assertion that the 15 percent differential would result in a \$34 million increase in costs is equally wrong.

In reaching this conclusion, the Department disregards the \$15.2 million which it concedes its own Option 2 would cost. Further, it omits the costs for the Senior Foreign Service, with bonuses; finally, it does not take into account that my bill provides only 10 steps per grade while both H.R. 6790 and its own proposal have 14 steps. Collectively, these costs are in the neighborhood of \$18 million. Thus the apparent differences between my bill and H.R. 6790 are in the neighborhood of \$16 million.

However, the Department totally disregards the large savings in numbers of personnel which my bill would provide.

First, by raising the qualification standards of candidates, my bill would reduce costs in training, transfers, and turnovers in personnel. Second, by providing the 15 percent tax-exempt incentive, it would reduce the resistance of married personnel to accept foreign assignments because their spouses are employed in Washington, D.C., and transfers would reduce their net family income. Thus, it would eliminate the inordinate delays now occurring in effecting transfers abroad and it would thereby reduce at least by half the number of foreign service personnel now not doing anything while in the "pipeline" between posts. Finally, through its more efficient "selection out" mechanism permitting easy access to civil service positions, my bill would eliminate most of the current costly delays in terminating personnel whose services are no longer needed.

I estimate that the total savings which my bill would generate are at least equal to the nominal increase of 15 percent in pay. Though each employee would receive more, employee productivity would also be greater, fewer personnel would be needed at any time and the total cost to the government would be less than now.

Department of State analysis:

The classification of positions is not at issue in the pay schedule. The Department is already responsible for grading

foreign service positions in a manner comparable to and consistent with the civil service classification system.

*Comment.*—The Department intentionally obscures the essential difference between my bill and current practices which need serious reform. First, my bill places the responsibility on the Office of Personnel Management as well. Second, my bill requires the Office of Personnel Management to maintain a list by grade classification of foreign service personnel. Finally, unlike the current statute and H.R. 6790, my bill does not exempt positions from the provisions of chapter 51 of title 5, United States Code. Consequently, the levels of difficulty of work, the job descriptions, the interrelationships of all positions will be clearly determined by a standard now used for all civil service personnel.

Equally important to classification is assignment to the right level of difficulty of work. Whereas some foreign service positions abroad are more or less properly classified, officers assigned to those positions often have higher grades than the positions justify. Under my bill, this questionable practice would be curtailed and assignments more than one grade higher or lower would need to be reported to the Congress on a periodic basis.

The objection has been raised by the Department that reasons of compassion, privacy, or national security might justify or lower level assignments. Nothing in this provision of my bill requires the Secretary to transmit the names of such personnel other than on a confidential basis.

Department of State analysis:

The Helms Amendment would require the Department to promote exactly the number of people it had positions for at the next higher level. At the present time, the Department promotes no more people than it has positions for at the next higher level, based on a five-year average of needs. This strictly-controlled system has been in effect for three years, and consequently the Department is not "top heavy with upper rank FSOs who do not have suitable jobs and are overpaid for the work they have been assigned." In fact, the Department often does not promote quite as many individuals as it has positions for at the next higher level, so that it can give promising members of the service "stretch" assignments to test their capability to perform at the next higher level.

*Comment.*—This observation is extraneous. My bill does not contain any provision whatsoever relating to promotions. It relates only to proper classification, proper pay, proper assignments, and proper retirement benefits. Thus the Department's observations are misleading.

Department of State analysis:

The Helms Amendment would impair the Department's flexibility in making assignments. Assignments above or below the officer's personal class are not usually encouraged, but the Department maintains the right to make such assignments, discretely and in case of demonstrated need. To restrict such authority or to publicize its use would make it difficult to respond adequately to cases where the emerging situation in a foreign country creates new types of needs, or to cases where compassionate judgment dictates a specific locale.

*Comment.*—This criticism is unwarranted. My bill does not in any way impair legitimate flexibility and leaves to the Secretary full discretion in assignments. It merely requires that the Secretary report to Congress periodically any assignments to “a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual.” As I stated earlier, these periodic reports could be given in a confidential communication, protecting privacy and national security.

Department of State analysis:

Under the Helms Amendment, it appears a transfer would be required every time an officer was promoted, while in a job, to a rank above the level of the job.

The amendment runs counter to the occasional need for unannounced changes in staffing of a post. If conditions in a country suddenly change, and a different mesh of ranks and areas of expertise is required at our embassy, the Department would either have to report to Congress the “error” in its new assignments, possibly alerting foreign governments to the revamping of a mission, or take the time to re-do all the paperwork necessary to regrade the position or to change its skill-code. Neither alternative would serve our national interest.

The amendment also runs counter to the occasional need for a discrete, compassionate assignment. In a case where a member of the Foreign Service, one of his or her immediate family members, can no longer maintain his health or profession in most areas of the world, but must have specific medical help available in only a few countries and cities, or a residence or office which is compatible with the specific ailment, or the availability of reasonably-high priced servants who can help to compensate for the handicap, the Director General would no longer be able to handle the matter discretely, assigning the individual to a post where his or her specific needs can be met, sometimes regardless of the aim of matching position and personal ranks. He would have to violate considerations of privacy, and list the individual's name and post on a report to Congress.

*Comment.*—These observations are belabored elaborations of an earlier criticism shown to be unwarranted. My bill would not require an officer to be transferred simply because of promotion. Nor does my bill preclude any change of the staffing of a post, the creation, of new posts, or positions, or their abolition.

The comment on compassion is not only gratuitous but also off the mark. My bill, and my bill alone, provides a higher 15-percent pay increase, a higher 2½-percent computation formula for retirement and a provision for additional compensation for the sufferings of hostages. None of these appear in any bill supported by the Department of State. In fact, all are opposed to it. Thus, any person reading my bill and noting the opposition to it by the Department of State would find it ironic that the Department would presume to transmit such an inappropriate language on compassion. As I stated earlier, any



assignments one grade higher or lower could be communicated to Congress by the Secretary of State in a confidential manner, preserving privacy and protecting national security.

Department of State analysis:

The President's Task Force on Foreign Service Pay, which met between June and November 1979 to study foreign service compensation and the Hay Study of Foreign Service salaries, specifically urged adoption of a 14-step salary schedule as a means of recompensing the Foreign Service for the difficulties in Foreign Service life.

Fourteen steps were also constructed to provide a long-term reward for employees in specialist positions, whose job categories do not provide many promotion possibilities—such as nurses, security officers, and secretaries. Employees in these fields inevitably remain in each grade a long time; promotion opportunities are strictly limited by the FS classification system which parallels that of the Civil Service. They could be encouraged to remain in the Foreign Service by the 14 step system. The 14 step system will have no impact on promotions—it will simply help those who cannot be promoted.

The Secretary's ability to establish positions is already rigidly limited by position ceilings and budget. This fact would not be altered by the Helms Amendment.

*Comment.*—The 14 step system is totally inconsistent with the “up or out” philosophy which the Department of State repeatedly employs in justifying its claims for a more preemptory control over its foreign service personnel. Today, Foreign Service Officers, Foreign Service Information Officers, Foreign Service Reserve Officers have only seven steps. The corresponding grades in the civil service have ten steps.

The rationale for the seven step system has been based on “up or out,” on the assumption if one is not promoted within seven years one should not be retained in the foreign service. Now, instead of the ten step system of civil service, the State Department argues for fourteen steps. These would add nearly 13.5 percent to the top salary in each grade.

One of its justifications is that this system is a “means of recompensing the Foreign Service for the difficulties of Foreign Service life.” Yet, the benefit of this “recompensing” would begin only after nine years in grade.

When introducing my bill, S. 2986, I observed as follows:

“The administration bill contains several provisions contradicting the concept that the foreign service should be an elite service, drawing on the best talents of its citizens. For example, it provides for 14 steps when the civil service grades have only 10. These four additional steps supposedly are to reward foreign service personnel for the hazards, inconveniences, and disruptions which attend their careers and which require sacrifices and discipline not expected of civil service personnel. Yet the only beneficiaries of a 14 step grade system are those who are the least competent and have not been promoted to the next higher grade; or alternatively persons in “dead end” jobs from which there is no hope of promotion.”

I am opposed to the fourteen step system. Under my bill, the ten step system would apply. As to the issue of compensating nurses, security officers, secretaries, I note that my bill retains the Foreign Service Staff Corps, from which there is no selection out, while H. R. 6790 abolishes it, bringing the threat of selection "out" but no provision for "up." Certainly this is no improvement for "nurses, security officers, and secretaries."

Moreover, my bill would compensate all foreign service personnel from the outset for the hazards of the foreign service and not require some to wait nine years (assuming they are not promoted) while others wait forever (assuming they are promoted) for that compensation.

I cannot justify by any means a 14 step system for a service which preaches "up or out." It would take 17 years in the same grade to reach step 14. That is certainly a very slow "up" which hardly justifies the risk of an abrupt "out" any time during that long service. Notably, the safeguards of the adverse action provisions now available to "nurses, security officers, and secretaries" are repealed under HR 6790, leaving them with no procedure equivalent to those available to civil service employees.

Department of State analysis:

*2. Recruitment and Examination*

Section 516 would require written and oral examinations for all members of the service (not just FSOs) for appointment at grades 13-7 i.e. through the equivalent level of the current FSO-6. In addition the examination would have to include tests of geography, history, U.S. political structure, and international affairs in the twentieth century, not only for prospective FSOs, but for all prospective members of the Service. Since we each year recruit almost as many support personnel and specialists as we do FSOs; since we recruit nationwide for geographical representation and since we do not have written examinations in these fields for specialists, this provision would require significant additional resources, even if it were either practical or desirable to examine on a nationwide basis support personnel in these knowledge areas by written examinations. The level of difficulty of the FSO written examination is too high to be administered to clerical and support personnel even on a differential score basis as proposed by the bill. Our affirmative action efforts would be crippled by this proposal.

We now have severe difficulty in recruiting secretaries, communicators and specialists for the Foreign Service—*without* a requirement of a written examination in these knowledge areas. To impose such an examination on these people would further complicate recruitment and undoubtedly result in even more serious staffing shortages.

Under existing authority and Executive Order officers at the FSO-5 level and above who have competitive civil service status could convert to the Foreign Service under the lateral entry program without further written examination competition. This would apparently be barred by this new Section 516.

*Comment.*—The Department of State avoids discussing the most important part of my provisions for recruitment and examination. As I stated when introducing the bill, even those who had taken the written Foreign Service Officer and Foreign Service Information Officer examinations were found to be unqualified. Smith Simpson, a former Foreign Service Officer, who served on the Board of Examiners, learned on inquiring that the Department of State had authorized the Educational Testing Service (which also gives college entrance examinations) to “raise the raw scores” of the Foreign Service candidates in order to pass the number of applicants it wished to bring before the oral panels. He learned that “a candidate receiving 35 on his written examination had his score doubled to reach the passing mark of seventy.”

Are these the practices of a Service seeking the best qualified?

As to the Department's complaint about the range of grades requiring written examinations, I should like to point out that these candidates are being appointed to positions with “rank-in-person” as GS-12. By military standards that is a position as high as “Captain.” I cannot comprehend why the Department would not wish to require a written examination from persons of that relatively senior position.

I note with special interest the complaint about the difficulty of obtaining clerical personnel, notably secretaries. Yet I am informed that the Office of Personnel Management regularly tests typists and secretaries for employment as civil service employees in Washington of the Department of State. That Office could easily provide the same testing services for foreign service personnel.

Earlier I had noted that recruiting better qualified personnel was one of the justifications for the 15 percent tax-exempt additional compensation. I am pleased to note that the Department concedes that it now has “severe difficulty in recruiting secretaries”. Certainly the 15 percent differential might be an inducement and might save recruitment and personnel turnover costs.

Department of State analysis:

New Section 517 would require an appropriate oral examination for appointment to Classes 1-6 of the Foreign Service. This is the current practice. It provides, however, that officers in the three senior ranks, FSO-3, 2 and 1, could be appointed as FSOs by the Secretary without any consideration of merit. In contrast, H.R. 6790 severely limits such appointments at senior levels, through the 5 percent limit on non-career SFS members and the extended career candidate period of at least 4 years. This provision of the Helms substitute could be the source of easy political abuse.

Section 518 would require OPM to maintain a register of all Foreign Service personnel to establish their eligibility for appointment to the Civil Service in a corresponding grade. Since most Foreign Service personnel will never convert to the Civil Service, this creates an unnecessary administration burden. The purpose intended could be achieved by maintaining such registers only when needed. More fundamentally, the implication of the section that poor per-

formers in the Foreign Service should be accepted into the Civil Service implies that the latter is of lower quality—an unwarranted and unjustified assumption and one that would be intolerable in the Department's operating environment.

*Comment.*—The Department's comments show further misreading of my bill, S. 2986. As the Department must know, only the President may appoint Foreign Service Officers with the advise and consent of the Senate. Consequently, the provision in my bill does not relate to Foreign Service Officers. However, I have no objection to placing a further limit on the appointment by any personnel whom the Secretary alone is entitled to appoint. Consequently, I am agreeable to accepting an amendment by adding at the end of line 16 of the printed text of my bill the following: “, provided at no time is there more than 5 percent of such personnel in the service of the Department of State.”

The observation that I would imply that “poor performers in the Foreign Service should be accepted into the Civil Service” is absurd. The justification for “up and out” is not poor performance. It is failure to be promoted. The Office of Personnel Management would not be required to obtain jobs outside the Department of State for Foreign Service personnel at a higher grade than their proper classification. In fact, the Department's tendentious argument on “poor performers”, if it were accepted at all, would reflect badly on the foreign service. It would mean that for several years the Foreign Service had had on its rolls “poor performers” and had been assigning them to positions they were not capable of filling. To my knowledge, this is the worst libel yet insinuated by anyone about the foreign service, certainly one that should be “intolerable in the Department's operating environment”.

Department of State analysis:

### 3. *Labor-Management Relations*

The amendment would place the Foreign Service under Title VII of the CSRA, and thus under the jurisdiction of the Federal Labor Relations Authority and the Federal Service Impasses Panel. This could result in a very extensive delay in the determination of negotiability and impasse issues. Given our penchant for rolling negotiations, we could effectively be blocked from implementing needed personnel changes on a timely basis. Additionally, since the FSIP has no knowledge of the Foreign Service system, we could expect some decisions which would be inconsistent with the Foreign Service system.

The amendment would include all aspects of Title VII unless specifically excluded. Title VII requires a negotiated grievance procedure, which is not excluded by the Helms amendment, thus creating a conflict with our present legislated grievance procedures.

The amendment retains our present definition of management official but restricts to one the number of management officials that may be designated at posts abroad. Presently we have 4 positions designated as management officials at

posts (COM, DCM, Administrative and Personnel officers). The amendment would require the COM to deal directly with the union representatives at post and to seek Department advice on local issues. The amendment would decimate an already thin layer of management and would delay effective dealings while Department advice was being sought.

*Comment.*—The first of the foregoing comments is obscurantist. The record of bargaining under the present Executive Order system is one of long delays, frustrations and confusions. There would be no better improvement than a negotiated contract in which both management and labor would have to set their topmost priorities and reach a compromise agreement on those terms. That is the universal practice not only in the private sector but also for the rest of federal government employees.

As to the "negotiated grievance procedure" provision in the statute governing civil service employees, I see no problem in repealing the current grievance legislation. It certainly is defective and needs improvement. Alternatively, I see no problem in retaining the present legislation modified along the lines of the Pell amendment already noted at the outset of my additional views, with a proviso that it would be replaced by a negotiated grievance procedure after five years.

On the other hand, I would accept the Department's observations requesting a liberalization of the number of management representatives at any post to include four (COM, DCM, Administrative and Personnel Officer).

Department of State analysis:

The amendment provides for the continuation of a single agency worldwide bargaining unit; however, it would permit an Foreign Service bargaining unit, if established in Commerce, Agriculture or Treasury (?) to merge with the Department bargaining unit, if accepted by the latter. This provision could destroy the single agency bargaining unit and create a multi-agency bargaining unit. Although all foreign affairs agencies are covered by the act, each has its own internal personnel policies and procedures. It would be inappropriate for the Department to bargain over the internal personnel policies of Commerce or Agriculture. The reference to Treasury mystifies me since I am not aware of any Foreign Service people in that organization.

The amendment would also permit Civil Service bargaining units in the foreign affairs agencies to merge with Foreign Service bargaining units, if accepted by the latter. This provision could result in negotiations with a single union over issues of two difficult personnel systems which have a different statutory base. It could result in a union holding hostage a proposal in one personnel system in order to gain an advantage in another personnel system.

*Comment.*—As the reading of my bill, S. 2986, will show, these provisions are permissive and not mandatory. They were included to call attention to the most serious problem which now concerns foreign policy formulation and the foreign services of the United States.

These are now fragmented. When introducing S. 2986, I stated the following:

... (the administration bill) "does not recognize that the crisis in foreign service does not arise mainly from such administrative issues as the number of classes of officers, the categories of its personnel, or even the promotion and selection out procedures it employs. It arises instead from confusions as to the proper role of the traditional Foreign Service in foreign policy; its status among the Federal Departments and agencies, including the Central Intelligence Agency..."

The purpose of these provisions, therefore, was to permit such liaison, confederation or federation among these disparate units of management and labor as possible, provided they desired closer association or merger. However, nothing in my bill mandates such a development.

Department of State analysis:

The amendment does not change the provision of Title VII which excludes supervisors from the bargaining unit. By virtue of this provision, the excluded category would increase from 10 percent to 30 percent the number of positions not covered by collective bargaining. Given the frequent rotation of people into and out of supervisory positions, it would create an artificial distinction between supervisors and employees.

*Comment.*—As I indicated in my statement when introducing S. 2986, my bill could stand completely alone or be an amendment to some other legislation. For this reason I expressly stated the following:

"Because this bill was written to be enacted either separately or, if found feasible, to amend portions of the administration bill, the necessary conforming textual changes in existing statutes, or in the proposed legislation, have not been completely indicated. As an example, the bill is silent in abolishing such existing Foreign Service categories, as the Foreign Service Staff Officer Corps, which would cease to exist as a separate entity under the administration bill".

This comment applies also to Title VII, to which reference is made. I would accept the amendment suggested by the Department of State regarding supervisors.

Department of State analysis:

The memorandum of explanation indicates that the FLRA could resolve issues concerning the job classification program. The OPM has the legal authority for the job classification program. The FLRA has neither the legal authority nor the technical competence to manage the job classification program.

*Comment.*—My bill in no way states or implies that the FLRA could resolve issues concerning the job classification program. As repeatedly stated earlier, my bill requires the Office of Personnel Management to exercise an even greater role by actively participating in the classification of foreign service positions. The "memorandum of explanation" merely alludes to the fact that under my bill FLRA

would be dealing with disputes in the context of job classification according to recognized civil service standards.

Department of State analysis:

*4. Special Pay and Retirement*

Proposed Section 413 would authorize a lump sum tax-free payment equal to 15 percent of basic salary for each member of the Service in addition to all other allowances. The minimum payment would be \$2,500 and the maximum \$7,500 or 15 percent of \$50,000. The stated purpose would be to compensate members for frequent moves and to encourage service abroad. As noted earlier, it would cost more than \$34 million per year for State alone, and perhaps \$60 million for all agencies using the Foreign Service System.

*Comment.*—I have earlier commented on the allegation that this provision would cost \$34 million and have demonstrated that when compared with the administration bill and when computing savings it would produce in recruitment, turnover, and training, this provision would actually save money. It would result in a smaller, better qualified, more efficient foreign service.

Department of State analysis:

The tax free feature could not possibly be enacted over the opposition of the Ways and Means Committee and the Treasury Department. The concept of special pay for the Foreign Service no matter where assigned would be strongly opposed by OMB and OPM as unwarranted and a bad precedent for the military and Civil Service personnel, such as FBI agents who move frequently.

*Comment.*—This argument presumes to know immutably the mind of the House Ways and Means Committee. I favor the tax free provision to emphasize that this is not base salary but an act of grace, or gratitude and acknowledgement, from the Congress of the United States for the hazards, burdens and inconveniences which foreign service personnel assume during a lifetime of career disciplined service. It would not serve as a bad precedent for the military, who in fact receive all kinds of services and emoluments tax free, including hospitalization for their dependents and commissary privileges. In fact, to the extent that it is correct to say that the foreign service is like the military service, to that extent his "tax free feature" is based on precedents already existing in the military services.

Department of State analysis:

The current housing allowance and post differential are premiums paid for overseas service, and other allowances, which are improved by the staff draft bill, are designed to reimburse personnel for the extra expenses incurred because of overseas service.

*Comment.*—The Department totally misconstrues my bill. It would compensate foreign service personnel 15 percent supplemental for being in a foreign service, subject to assignment on moment's notice wherever called. The disruption in moving from Paris to Washington

is just as great as the disruption of moving from Washington to Paris. The distinction is not between "overseas" and "not overseas". The distinction is between being in the Foreign Service or the civil service. That is such a fundamental distinction that temporary geographic location is irrelevant.

I have already indicated several times that this 15 percent is an inducement to attract superior personnel and to compensate them at least in some measure for their spouses' willingness to give up remunerative jobs in Washington, to disrupt the life of their families at a moment's call. The concepts that somehow this should not be compensated in any way and that "housing allowances and post differentials are premiums paid for overseas service" becomes every day more absurd. Certainly, less and less Foreign Service personnel actively seek these "premiums". A realistic approach is along the lines of the 15 percent differential I have indicated, especially since it will result in savings by providing a better foreign service with a smaller number of highly qualified and motivated employees.

Department of State analysis:

Section 6 of the bill would revise the Foreign Service retirement annuity factor from 2 percent to 2½ percent per year of service. This would increase the maximum Foreign Service annuity from the present 70 percent of full salary limit to 87.5 percent (2.5 percent × 35 years). The FBI, and the Civil Service generally, have an 80 percent maximum. This is without doubt a veto item. It would increase the unfunded liability of the Foreign Service Retirement system by more than \$400 million, and increase its annual normal costs by \$19.5 million.

*Comment.*—The State Department misreads my bill. This provision is not intended to be severable from the others. Its benefits apply prospectively and not to foreign service prior to enactment date. Its purpose is to encourage recruitment and retention of qualified employees. Thus the computation on costs is incorrect because no costs would be incurred for past foreign service.

The Department miscalculates further. The 2.5 percent annuity would be increased, as with comparable civil service employees, only to 80 percent. After that point of service was reached in 32 years of service, neither the department nor the employee would contribute to the fund. Moreover, I would be agreeable to increasing the average rate of contribution by both the employer and the employee to the same level as that paid by the FBI and Air Traffic Controllers, in order to maintain comparability with civil service provisions.

The Department overlooks one other feature. In the bill which it supports, the mandatory retirement age has been raised to 65. Certainly, with five more potential years of service at 2.0 percent per annum under present computations, the unfunded liability will be increased because the annuity maximum will have to be raised to 80 percent in conforming legislation.

Thus the alleged costs of this provision will need to be revised downwards severely by the Department both as to the amount of unfunded liability and the annual retirement benefits.



## Department of State analysis:

Section 6 of the bill would add a new subsection, 812(j), to the Foreign Service Act to provide substantial annuity benefits for the hostages. It would provide both an increased annuity rate and for bonus years of service varying by length of internment.

The increase in annuity for low salaried short service employees and high salaried long service employees is shown in the following table.

## 9 MONTHS DETENTION

Average salary-----	\$50,000	\$20,000
Actual years of service at retirement-----	25 years	5 years
Annual rate of additional annuity-----	\$38,000	\$16,200

The provision would cover only those in the Foreign Service Retirement system assigned to the post with diplomatic status—not those in the military or the civil service who might also be held hostage.

The final paragraph of the proposed Section 6(3), provides that a hostage shall not have his annuity reduced for age. This is meaningless since Foreign Service annuities are not reduced for age as are Civil Service annuities. The language of the bill does not carry out the stated purpose of allowing hostages to retire immediately upon their release at their option regardless of age. If a hostage does not qualify for disability retirement, there would have to be a waiver of the age 50 rule. The bill would grant an extra 18 years of service credit (subject to the 35 year limitation) for those held for one year.

*Comment.*—The Department again misreads the purposes of my bill, S. 2986. It is most obviously a bill amending the Foreign Service Act of 1946. It is before the Senate Foreign Relations Committee. It cannot, therefore, appropriately amend the retirement laws for civil service and military personnel.

If the Department wishes to persuade the President of the United States to expand the provisions of my bill, I would have no objection. That is always the privilege of the Secretary of State.

The statement that the provisions of this bill are restricted to persons with "diplomatic status" is wrong. Any participant at any post, or even in duty transit between posts, would be covered, whether the participant had a diplomatic passport or not.

The provision that the participant shall not have his annuity reduced because of age is not a statement as to present law but a clear affirmation as to future law, precisely because I wanted the Congress to go on record that there would be no reduction in the earned annuity for any cause whatsoever. The Department's comment on "disability retirement" is not relevant to my bill, because this retirement would not be construed as a disability retirement. There would be no medical examinations to determine whether the freed "hostage" was able to resume employment in the future. This retirement, if taken by the

hostage, would be compensation pure and simple, a restitution for the sufferings to which the employee had been subjected. As to costs, the Department's calculations are inaccurate. These general provisions, like those on retirement annuities, are prospective, not retroactive. Hostages now in Iran would receive benefits for their incarceration only from the date of enactment. The benefits they would receive for prior detention would need to be determined by special legislation, enacted *ad hoc*.

[From the Congressional Record, July 29, 1980]

The bill which I am introducing takes into account those areas which intimately touch on the personnel affairs of the foreign affairs agencies (State Department, International Communication Agency, Agency for International Development).

As to pay, this bill provides a basic salary table ranged with the same steps as the General Schedule (10 steps except in the super grades) plus a 15 percent supplemental pay exempt from income tax, with the provision that such supplement shall not be less than \$2,500 per annum and not more than \$7,500 per annum. Through this action, the Congress would take note that greater qualifications in professional and in personal qualifications are expected from foreign service personnel and will be recognized by statute in greater remuneration at all grades and steps.

To assure that the rank-in-person provisions do not distort the mission of the foreign service in position assignments, my bill requires that all positions be properly described and classified by standards similar to those of the classified civil service and that foreign service personnel be assigned to their proper level of jobs. Assignments two grades or more higher or lower would need to be reported periodically to Congress with reasons for these deviations from standards explained by the Secretary of State.

As to recruitment and selection, the present laxity and casualness must be corrected. For example, Smith Simpson, a former Foreign Service Officer who served on the Board of Examiners for the Foreign Service has asserted that he was "appalled by the prevailing shallowness" of those who had been examined by the educational testing service in Princeton, which administers the foreign service written examinations. On inquiring, he learned that the Department of State had authorized the testing service to "raise the raw scores" in order to pass the number of applicants it wished to bring before the oral panels. He learned that "a candidate receiving 35 on his written examination had his score doubled to reach the passing mark of seventy."

This bill has a provision to overcome this laxity and manipulation of standards. It requires that "part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in light of the ordinary clerical, technical or professional duties which the applicants would perform in the Foreign Service."

The provisions of H.R. 6790 go in the other direction—they impose further requirements on the Foreign Service to take into account

quotas for personnel based on sex, race, and other factors rather than the professional qualifications needed for an arduous diplomatic career in an international environment where tensions are increasing and dangers of life and limb multiply. Senator Pell's observations that the Foreign Service has many of the characteristics of the military service are becoming evident as our diplomatic personnel must carry out their duties under ever more grave security conditions. Our hostages in Tehran do not enjoy even the protections under international law which military prisoners of war have.

Because Foreign Service personnel are more than qualified to be in equivalent grades in the civil service, my bill provides that all Foreign Service personnel be concurrently carried on the rolls of the civil service at equivalent grades; that is, that they be rated at a "grade in the civil service corresponding to the salary class in the Foreign Service for each such individual." The bill provides that "if the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service."

The reason for this provision is to permit the Foreign Service to release redundant personnel without the painful selection out controversies which now attend such terminations. A further reason is that, if the Foreign Service is to accept such extraneous and unnecessary modifications as the Senior Foreign Service (modeled on the Senior Executive Service of the civil service) to appear to conform to general civil service practices and if its pay is to be related to civil service grades, then its members should have the employment rights of civil service personnel, as well, particularly in cases of selection out which are analogous to reduction-in-force practices in the civil service. These are not provided in the administration's bill.

On labor-management relations, I believe my bill is straightforward. Foreign Service personnel certainly should have all the collective bargaining rights which Federal civil service personnel have. This should be the minimum, not the maximum. Even the employees of the Panama Canal Company now have these collective bargaining rights, as do all the civil service personnel employed abroad by the military departments and the Department of Defense. The Foreign Service personnel should continue to have that modification which the present executive order provides, that is, a worldwide bargaining unit for each foreign affairs agency and membership therein by all personnel except the senior representative. For this reason, the bill extends the same provisions to the Foreign Service as civil service personnel have with the two modifications noted above and with provisions for further changes if desired by the foreign affairs agencies and their employee representatives. To achieve this, the bill amends subchapter 71 of title 5, United States Code along the terms indicated above.

As to retirement benefits, the bill recognizes that foreign service is at least as hazardous today as service in the Federal Bureau of Investigation, Federal Fire Protection Service, and Federal Air Traffic Controllers. For that reason, the bill provides the same 2.5 percent computation formula for years of service as these other personnel already have.

Finally, the bill recognizes that Foreign Service personnel can be held hostage and be threatened with terrorist violence while abroad and it provides an increase in retirement benefits for those persons who have been held captive in a foreign country by a foreign power or by a terrorist group. The retirement annuities of such victims of foreign violence would be progressively increased according to a schedule related to their length of captivity. Moreover, such personnel could retire immediately if they wished on an annuity without any reduction of benefits because of their chronological age.

These are the major provisions of the bill which I am offering. They could be passed separately from the legislation which is now before the House and Senate. They could also be incorporated in the legislation already under consideration, with suitable conforming changes in that legislation.

One issue that needs to have some consideration to achieve conformance relates to the Senior Foreign Service which is being proposed largely to appear to conform to the Civil Service Reform Act of 1979. Actually, this rank-in-person system already exists in the Foreign Service and the principle involved is no different from what already exists. However, the problem which arises is that under the administration's proposal there would be only 10 statutory pay grades (with the additional top 3 being paid the same as the civil service's Senior Executive Service) whereas under the bill these additional top three grades are included in the statute (corresponding to the old grades GS-18, GS-17, GS-16, the so-called "super grades"). This is not an issue so much of basic principle as drafting technique and should not create any major problem once the issue of acceptability or non-acceptability of the Senior Foreign Service concept is settled. On the other hand, the 14 step system is more serious and is unacceptable as a provision in a rank-in-person system based on promotion or selection out. It exists only in such systems as that of the Postal System where there are many so-called "dead end" jobs from which there can be no promotion upward and any increases in pay must be through an accretion in additional steps.

Because this bill was written to be enacted either separately or, if found feasible, to amend portions of the administration bill, the necessary conforming textual changes in existing statutes, or in the proposed legislation, have not been completely indicated. As an example, the bill is silent in abolishing such existing Foreign Service categories as the Foreign Service Staff Officer Corps, which would cease to exist as a separate entity under the administration bill.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 2986

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

SHORT TITLE

SECTION 1. This Act may be cited as the "Foreign Service Act Amendments of 1980".

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OBJECTIVES

SEC. 2. Section 111 of the Foreign Service Act of 1946 is amended—

- (1) by striking out "and" at the end of paragraph (8);
- (2) by striking out the period at the end of paragraph (9) and inserting in lieu thereof a semicolon and "and"; and
- (3) by adding at the end thereof the following:

"(10) to ensure that personnel in the Foreign Service are accorded all the rights accorded to personnel in the civil service; and

"(11) to provide further protections, procedures, and emoluments to such personnel, in addition to the protections, procedures, and emoluments provided to personnel in the civil service, in order to compensate such Foreign Service personnel for the hazards, inconveniences, and disruptions which encumber such personnel and which require sacrifice and discipline not expected of civil service personnel."

FOREIGN SERVICE SCHEDULE

SEC. 3 (a) Sections 412 through 415 of the Foreign Service Act of 1946 are amended to read as follows:

"FOREIGN SERVICE SCHEDULE

"SEC. 412. (a) There is established the Foreign Service Schedule, which shall apply to the members of the Service who are citizens of the United States and for whom salary rates are not otherwise provided for by this title.

"(b) The Foreign Service Schedule shall have 13 salary classes, designated FS-1 through FS-13, which shall correspond to grades of the General Schedule under section 5332 of title 5, United States Code, as follows:

<i>"Salary class:</i>	<i>Shall correspond to grade:</i>
FS-1	GS-18
FS-2	GS-17
FS-3	GS-16
FS-4	GS-15
FS-5	GS-14
FS-6	GS-13
FS-7	GS-12
FS-8	GS-11
FS-9	GS-9
FS-10	GS-7
FS-11	GS-6
FS-12	GS-5
FS-13	GS-4

"(c) Each class in the Foreign Service Schedule shall have 10 salary steps, equal to the steps for the corresponding grade in the General Schedule, except that the salary classes designated FS-1, FS-2, and FS-3 shall have one, five, and nine steps, respectively.

"ADDITIONAL COMPENSATION.

"SEC. 413. (a) The Congress finds that the availability of members of the Foreign Service to serve world-wide at any post assigned with-

out regard to hazards, inconveniences, or disruption of family relations and educational and other personal plans entitles such members to the additional compensation provided under subsection (b).

"(b) In addition to the basic salary prescribed under section 412 and any other allowance authorized by law, there shall be paid in a lump sum to each member of the Foreign Service an amount equal to 15 percent of the basic salary for such member at the grade and step prescribed under section 412, except that in no event shall a member of the Foreign Service be paid under this section less than \$2,500 or more than \$7,500. Such amount shall be exempt from taxation under chapter 1 of the Internal Revenue Code of 1954.

"CLASSIFICATION OF POSITIONS

"SEC. 414. The Secretary of State shall designate and classify positions in the Department of State, the Agency for International Development, and the International Communication Agency and positions at Foreign Service posts, subject to the applicable provisions of chapter 51 of title 5, United States Code, in relation to the salaries established under section 412. Positions so classified shall be considered to be part of the civil service for purposes of title 5, United States Code. Career members of the Foreign Service shall be eligible to compete for positions classified under chapter 51 of title 5, United States Code, which are not classified by the Secretary pursuant to this section.

"ASSIGNMENT TO POSITIONS

"SEC. 415. The Secretary shall, to the maximum extent practicable without prejudicing the foreign policy or national security interests of the United States, assign individuals holding a personal rank in the diplomatic service of the United States only to such classified positions as may be appropriate to the rank and salary of such individuals. The Secretary shall from time to time prepare and transmit a report to the Congress listing the names of each individual assigned to a classified position for which the salary was more than one grade higher or lower than the grade corresponding to the personal rank of such individual."

(b) Section 416 of such Act is repealed.

ADMISSION TO FOREIGN SERVICE SALARY CLASSES

SEC. 4. (a) Sections 516 through 518 of the Foreign Service Act of 1946 are amended to read as follows:

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 7 THROUGH 13

"SEC. 516. No person shall be eligible for initial appointment as a member of the Foreign Service of classes 7 through 13 unless such person has taken an appropriate written and oral examination, as the Board of Examiners for the Foreign Service may prescribe, to determine fitness and aptitude for the work of the Service and demonstrated loyalty to the Government of the United States and attachment to

the principles of the Constitution. Part of the written examination shall test the applicant's knowledge of the geography, history, and political structure of the United States and of the major international events of the twentieth century. The Board of Examiners for the Foreign Service shall interpret the results of such examinations in the light of the ordinary clerical, technical, or professional duties which the applicants would perform in the Foreign Service.

"ADMISSION TO FOREIGN SERVICE SALARY CLASSES 1 THROUGH 6

"Sec. 517. No person shall be eligible for initial appointment as a member of the Foreign Service of classes 1 through 6 unless such person has taken an appropriate oral examination, as prescribed by the Board of Examiners for the Foreign Service, to determine the fitness and aptitude of the applicant. Notwithstanding the preceding sentence, the Secretary of State may appoint an individual as a member of the Foreign Service of class 1, 2, or 3, without examination by the Board of Examiners for the Foreign Service if, not later than 30 days after such appointment, the President notifies the Senate of such appointment.

"OFFICE OF PERSONNEL MANAGEMENT

"Sec. 518. (a) The Director of the Office of Personnel Management shall cause the names of all individuals appointed to the Foreign Service to be placed on the registers or lists of eligibles, maintained by the Office of Personnel Management under subchapter I of chapter 33 of title 5, United States Code, together with the grade in the civil service corresponding to the salary class in the Foreign Service for each such individual. The Director of the Office of Personnel Management shall keep current the information provided under the preceding sentence.

"(b) If the employment of an individual in the Foreign Service is terminated, the Director of the Office of Personnel Management shall assist such individual in finding a position of corresponding grade in the civil service."

(b) Sections 519 through 520 of such Act are repealed.

LABOR-MANAGEMENT RELATIONS

SEC. 5. (a) Section 7103(a)(2) of title 5, United States Code, is amended—

(1) by inserting "or" at the end of clause (iii); and

(2) by striking out clause (iv).

(b) Title VI of the Foreign Service Act of 1946 is amended by inserting after part E the following:

"PART F—LABOR-MANAGEMENT RELATIONS

"SEC. 651. (a) The provisions of subchapter 71 of title 5, United States Code, shall apply with respect to labor-management relations in the Foreign Service except to the extent such provisions are inconsistent with this section.

"(b) The Federal Labor Relations Authority shall resolve any dispute as to whether this Act or chapter 71 of title 5, United States Code, applies with respect to labor-management relations in the Foreign Service.

"(c) Each member of the Foreign Service who is a citizen of the United States, wherever serving, other than a management official, has the right to form, join, or assist any labor organization or to refrain from such activity, freely and without fear of penalty or reprisal. Each such member shall be protected in the exercise of such right.

"(d) (1) For purposes of this section, except as provided in paragraph (2), the term 'management official' means an official who—

"(A) is a chief of mission or principal officer;

"(B) is serving in a position to which appointed by the President, by and with the advice and consent of the Senate, or by the President alone;

"(C) occupies a position which in the sole judgment of the Secretary is of comparable importance to the offices mentioned in clause (A) or (B);

"(D) is serving as a deputy to any individual described by clause (A), (B), or (C);

"(E) is assigned to carry out functions of the Inspector General of the Foreign Service; or

"(F) is engaged in the administration or formulation of the personnel policies and programs of the Department.

"(2) The term 'management official' does not include, for purposes of this section, more than one senior official from the Department, the International Communication Agency, or the United States International Development Cooperation Agency, when such official is assigned to a Foreign Service post abroad.

"(e) (1) For purposes of involvement in any labor organization, the employees, other than management officials, of the Department, the United States International Development Cooperation Agency, and the International Communication Agency shall constitute, with respect to each such Department or Agency, as the case may be, a single and separate worldwide bargaining unit.

"(2) For purposes of involvement in any labor organization, the members of the Foreign Service who are employees, other than management officials, of the Department of Agriculture, the Department of Commerce, and the Department of the Treasury, may constitute, with respect to each such department, as the case may be, a single and separate worldwide bargaining unit or, if recognized as a bargaining unit on the date of enactment of this Act, may merge with any bargaining unit under paragraph (1) which accepts such merger.

"(f) Upon the approval of the Federal Labor Relations Authority and under such terms and conditions as the Authority may require, any bargaining unit representing civil service employees of a department or agency of the United States for which members of the Foreign Service are employed may merge with a worldwide bargaining unit representing only Foreign Service employees if such unit accepts such merger."



COMPUTATION AND PAYMENT OF ANNUITIES

SEC. 6. Section 821 of the Foreign Service Act of 1946 is amended—

(1) by striking out “2 per centum” in the first sentence and inserting in lieu thereof “2.5 per centum”; and

(2) by adding at the end thereof the following:

“(j) (1) The rate of annuity of any participant who, during his service, was held hostage or detained in a foreign country in violation of any treaty or other international agreement to which the United States and such country are signatories shall be increased by a rate equal to—

“(A) one-tenth per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained, if such annuitant was held hostage or detained less than 30 days; or

“(B) two-tenths per centum of the average basic salary of the annuitant, as computed under subsection (a), for each day such annuitant was so held hostage or detained in excess of 30 days.

“(2) For purposes of computing under subsection (a) the amount of the annuity for which each participant is entitled, the number of years of creditable service calculated under sections 851 and 853 shall be increased by one year for each month or fraction thereof a participant is so held hostage or detained less than six months and shall be increased by two years for each month or fraction thereof a participant is so held hostage or detained in excess of six months.

“(3) A participant so held hostage or detained shall not have his annuity reduced by reason of his age.”.

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